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I am submitting herewith a dissertation written by Jeremy Smith entitled "The "Puppicide" of Policing: How the Law Rationalizes the Police Killing of "Dangerous Dogs"." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Sociology.

Dr. Tyler Wall, Major Professor

We have read this dissertation and recommend its acceptance:

Drs. Lois Presser, Michelle Brown, Harry Dahms, and Derek Alderman

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(Original signatures are on file with official student records.)

**The “Puppicide” of Policing:
How the Law Rationalizes the Police Killing of
“Dangerous Dogs”**

A Dissertation Presented for the
Doctorate of Philosophy
Degree
The University of Tennessee, Knoxville

Jeremy J. Smith
May 2021

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ABSTRACT

Police officers kill approximately 10,000 dogs every year in the United States, according to an estimate by a Department of Justice official. This amounts to police officers killing approximately 25 to 30 dogs every day. Although it is difficult to ascertain the actual extent of the problem since many law enforcement agencies do not keep track of canine shootings by their officers, the number of dogs killed by police during these encounters has government officials declaring that an “epidemic” is occurring within policing itself. The degree to which dogs die at the hands of police have led some commentators to refer to this trend as “puppycide” or “canicide.” The purpose of this dissertation is to examine how U.S. law rationalizes canicide, or the police killing of dogs. A key focus of this dissertation, then, is how the judiciary’s construction of “dangerous dogs” coalesces with justifications and rationalizations of canicide. To do this, this dissertation provides a sociolegal analysis and ethnographic content analysis of federal court cases and legal decisions on canicide, with a specific focus on the most important case to date, *Brown v. Battle Creek Police Department*.

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CHAPTER ONE

INTRODUCTION

Police officers kill approximately 10,000 dogs every year in the United States, according to an estimate by a Department of Justice official (Griffith, 2014, para. 13; see also Scott, 2016). This amounts to police officers killing approximately 25 to 30 dogs every day (Griffith, 2014). Although it is difficult to ascertain the actual extent of the problem since many law enforcement agencies do not keep track of canine shootings by their officers (Whitehead, 2017), the number of dogs killed by police during these encounters has government officials declaring that an “epidemic” is occurring within policing itself (Griffith, 2014). The degree to which dogs die at the hands of police have caused some to refer to this trend as “puppicide” (Kaatz, 2014), a term that is clearly meant to pull at the heartstrings. Officers of the Chicago Police Department have killed or shot at 700 dogs since 2008 (Main, 2018). For the Atlanta metro area, approximately 100 dogs were shot between 2010 and 2012 (Coleman, 2012). According to departmental records, “dogs were shot 25 times in Atlanta, 32 times in DeKalb county, 19 times in Gwinnett County, 10 times in Clayton County and eight times in Cobb County” (Coleman, 2012). In Milwaukee alone for the year 2016, it was found that 3.82 percent of use of force incidents involved officers using force exclusively against dogs (Brandl, 2017). Furthermore, many of these use-of-force

encounters were for dogs running loose or other general complaints about dogs (Brandl, 2017).

Even though the majority of incidents—nationally—in which an officer discharges their service weapon occur during police-dog encounters (Bathhurst, Cleary, Delise, VanKavage, & Rushing, 2011) and there is an established literature focusing on the intersection of animals and criminology (Agnew, 1998; Beirne, 1997, 1999, 2002, 2004), this particular practice of state violence has received hardly any scholarly attention. This is unfortunate, for reasons that will hopefully be clear soon enough. The purpose of this dissertation, then, is to fill this gap by taking seriously the politico-legal history of police violence against dogs—whether as “pets,” “strays,” or “dangerous dogs” (i.e. constructed as cases of “rabies”, or “mad dog syndrome”, etc), or what Bloch and Martínez have called “canicide.”

Answering these questions is done by using ethnographic content analysis to examine the ways in which the federal judiciary uses the concept of the “dangerous dog” to rationalize and legitimize police violence against dogs. The primary document for analysis is the Sixth Circuit’s 2016 decision in *Brown v Battle Creek Police Department* with auxiliary or supplementary documents consisting of federal court opinions at all levels confronting the issue of an officer involved shooting of a dog. Focusing on how the federal judiciary understands police violence against dogs provides a richer and deeper understanding of how “the law” constructs images of dangerousness as a means of rationalizing

violence. As an effort to inquire into police violence against dogs, or canicide, this dissertation explores the ways law negotiates, rationalizes, and legitimates this pervasive form of state violence.

It is prudent to first describe a few incidents where police have shot or killed dogs to give the reader a certain glimpse into this under researched but routine form of state violence. First, we should start with the events that correspond to the precedent setting *Brown vs. Battle Creek* ruling, and that serve as the baseline for this dissertation. In *Brown v Battle Creek Police Department* (2016), the police searched through the trash of Danielle Nesbit and found “baggies with residue of marijuana and cocaine, a small amount of loose marijuana, and mail addressed to Plaintiffs and Vincent Jones” (p. 561). The police suspected that Vincent was living with Danielle who was the mother of Vincent’s child, and the owner of the residence. Living with Danielle was her mother, Cheryl Brown, and a Mark Brown. A search warrant was issued for the residence based on the items the police found while searching Danielle’s trash. On the day of the raid, officers were en route to the Nesbit residence when they received information that Vincent had been detained by authorities after leaving the residence and that a dog was in the backyard. Officer Case testified that the decision to continue with the raid was made because “whether [Vincent Jones] got stopped or not, the risk [that others were in the residence] would still be high” (*Brown v Battle Creek*, 2016, pp. 560-561). Mark Brown was walking to his car when the officers arrived to execute the search warrant. The police detained

Mark Brown and informed him of the search warrant. Mark Brown offered the officers the use of his house key for the front door, but the raid team chose to use a battering ram instead. According to the officer's counsel, "the officers would not have used the keys Mark Brown offered to give them because the officers would not have had any idea whether those keys were the correct keys" (*Brown v Battle Creek Police Dept*, 2016, p. 576).

While making their way to the front door, the raid team noticed two pit bull dogs in the front window. According to Officer Klein who was leading the raid, the dogs were "'digging and pawing' and 'jumping' at the window" (*Brown v Battle Creek*, 2016, p. 562). After breaching the front door, one of the dogs "jumped off the couch, was aggressively barking at the officers, and lunged" at them (p. 563), and then Officer Klein shot one of the dogs, who received a nonfatal wound. (*Brown v Battle Creek*, 2016). According to Officer Klein, "the first pit bull 'had only moved a few inches' between the time when he entered the residence and when he shot her" (*Brown v Battle Creek*, 2016, p. 563). The now injured dog made its way to the basement through the kitchen followed by Officer Klein and the entry team. The entry team began making their way down the stairs when the dog- which was at the bottom of the stairs- started barking at them. Officer Klein fired two more shots and killed the dog.

During the initial entry, the second pit bull jumped off the couch and evaded the entry team by making its way to the basement via the kitchen (*Brown v Battle Creek*, 2016). According to Officer Klein's testimony, the second dog was

not showing any signs of aggression other than barking at the officers while it was standing sideways. Yet, Officer Klein chose to shoot the second dog because the officers believed the dog was preventing them from “safely” sweeping the area (*Brown v Battle Creek Police Dept.*, 2016). Again, Officer Klein’s first shot was nonfatal, as was the second shot from a different officer; the fatal shot came from a third officer who fired on the dog to “put her out of her misery” (*Brown v Battle Creek Police Dept.*, 2016, p. 563). The Sixth Circuit did not mention if the police search of Danielle Nesbit’s residence revealed any criminal activity occurring within the home.

Despite *Brown vs. Battle Creek* being a precedent setting legal ruling, the events leading up to this decision are in no way unique. A few more examples might be useful to further orient the reader to the legal and cultural politics of “canicide.” In 2010, Officer Fike with the District of Columbia Police Department shot and killed a festival-goer’s dog, Parrot, at the Adams Morgan festival which the police described as a pit bull (Zapotosky, 2010). Parrot’s owner claimed to have been subduing his dog the moment the officers arrived.

That's when a D.C. police officer took over, putting his knee in the middle of Parrot's back while he pulled the dog's forelegs behind him, [Parrot's owner] said. He said that the officer then grabbed Parrot by his neck and threw him over a banister at the Brass Knob antique store and that just as the dog righted itself, the officer pulled out his gun and fired (Zapotosky, 2010, p. B01).

Parrot’s owner further stated that, “The officer drew his gun in an unnecessary act of cowboy gunslinging law enforcement and shot my dog amidst a crowd of thousands” (Zapotosky, 2010, p. B01). The police version of events differs from

that given by Parrot's owner. The "commander of the 3rd Police District, said that once the officer pushed the dog down the stairwell, 'the dog immediately turns and runs at the officer aggressively'" (Zapotosky, 2010, p. B01). There is no further elaboration by the commander (Zapotosky, 2010). The police version of events, however, highlights an important aspect of police violence. Namely the use of a specialized vocabulary to describe incidents of police violence so that the actions of the officer are always justifiable, or at least ambiguous. The state's default when narrating any police-citizen encounter is to perceive any violence within an encounter between the police and the citizenry as (1) originating with the citizen and (2) as being spontaneous and a threat to officer safety. Threats against officer safety come in many forms, even using a camera phone to record police activity.

A video uploaded to YouTube by PS GW (2013) shows a street in Hawthorne, California closed off by at least 5 police cars. The camera pans and shows Mr. Rosby standing by his vehicle with his dog, Max (a Rottweiler), recording the police activity with his phone. Mr. Rosby's vehicle is parked outside the newly established restricted space with what sounds like music playing. After the police enter the home, two uniformed officers walk across the street on the side where Mr. Rosby is standing, and then walking down the sidewalk away from Mr. Rosby. All the while, Mr. Rosby was recording the police activity. Another man is also seen recording the officers and Mr. Rosby appears to exchange pleasantries with the man. Mr. Rosby, still recording, walks Max along

the street just behind the *wall* established by the police vehicles to a point just short of the other side of the road where he continues recording. The video pans back to the officers on the other side of the street and the viewer sees that they are watching over some individuals who are handcuffed and seating on the sidewalk. The camera then pans back to Mr. Rosby who is seen walking back to his original location where he continues recording the officers who are at least 50 feet away from him. It is at this point that we can see the officers notice Mr. Rosby recording them. At no time do we see Mr. Rosby walk toward the officers, yell at the officers, or otherwise engage with the officers. However, one of the officers begins to walk toward Mr. Rosby before stopping after a few feet and then returning to his fellow officer. As Mr. Rosby is putting Max into his vehicle and saying something like “this is a civil rights violation,” we see the two officers begin walking toward Mr. Rosby. It is at this point that we see a space, once open to the public, transformed into a restricted zone and Mr. Rosby’s innocuous behavior transformed into a threat. Furthermore, at no time do we see Max barking, growling, or pulling on his leash at anyone while Mr. Rosby is walking around freely.

After putting Max into the car, Mr. Rosby closes the door and walks casually toward the officers (PS GW, 2013). One of the officers appears to tell Mr. Rosby to turn around, and Mr. Rosby complies. We do not see Mr. Rosby resist the officers; however, Max begins barking as the two officers handcuff Mr. Rosby. One of the officers readies his long rifle for possible use—the officer does

not seem to be readying his rifle because of Max; the officer appears unconcerned with Max—as the officers begin escorting Mr. Rosby away from his vehicle. It is at this point that Mr. Rosby appears to say something to the officer who has a hold of him which resulted in the officer pulling on Mr. Rosby and the other officer grabbing Mr. Rosby by his shirt. Max is now getting restless in the car as he continues to bark; Max jumps from the car and runs toward the officers. He stops approximately 6 feet from the officers and Mr. Rosby as a third officer comes from around the two detaining Mr. Rosby with his gun drawn. Max barks and runs forward; stops and lowers his head. Max is approximately 3 feet from the third officer whose gun is at low-ready. This officer reaches out toward Max as he sniffs something on the ground. Here we see the officer redefining boundaries at will as he slowly encroaches on Max's space. Max, however, resists this redefinition of space by advancing on the encroaching officer, who immediately backs away. Max then returns to his spot on the sidewalk close to Mr. Rosby. The officer once again encroaches on Max's space with his hand held out, and Max once again advances on the officer. This time, though, Max barks and jumps at the officer's hand. The officer fires his weapon shooting Max at near pointblank range. All the while, Mr. Rosby, who was being forcibly detained, could only standby and watch helplessly as the officer killed Max because it dared to defy the officer's authority by continuing to protect Mr. Rosby. Mr. Rosby is then escorted to a police vehicle as Max lies dying in the street.

Courtney Miller is a resident of Arlington Heights in Fort Worth, Texas and she recounts an incident at a city council meeting when local officers entered onto her property without warning. Miller begins by setting the scene of the night in question by describing to the audience how her living room blinds were raised, and the home's interior lights illuminated. The only conclusion one could draw according to Miller is that someone was most likely home at that hour (Now This News, 2019). At some point, Miller's dog wanted to go outside, and approximately 5 minutes after letting the dog out, the dog began "barking furiously" (Now This News, 2019, 0:39). Miller went to investigate and noticed there were flashlight beams moving erratically across her backyard. When Miller yelled "who's back there?" (1:01), the response she received was "it's the police" (Now This News, 2019, 1:04). According to Miller, the police never came to her front door to announce their presence. Instead they choose to infiltrate her backyard clandestinely and roam her property without her knowledge (Now This News). The police only identified themselves when "a white woman in a middle-class neighborhood" (1:08) demanded to know who was on her property (Now This News). The reason given to Miller for the police's presence on her property was because of a barking dog call. Miller then juxtaposes her experience with that of Atatiana Jefferson, a woman of color, who was fatally shot by Officer Aaron Dean of the Fort Worth Police Department as she stood inside her home while he peered into the home through the window from the outside (Ortiz, 2019). Like Miller's experience, the officer stealthily maneuvered around Jefferson's

home and property instead of coming to the front door to investigate the call the department received regarding her residence—a welfare check (Ortiz, 2019). Unlike Miller’s experience, however, Atatiana Jefferson was not given the opportunity to call out and inquire about who was outside her home. Not only was Atatiana Jefferson denied the right to her private space, but her harmless behavior was transformed into a threat because an officer chose to deem her sanctuary as a threatening space to him. Miller reinforces the chasm between her experience and that of Atatiana Jefferson by highlighting that her (Courtney Miller’s) worry the night the police intruded upon her property was that they could have shot her dog.

Police Violence and Canicide

Exacerbating the tragedies such as those of Atatiana Jefferson, Leon Rosby, Courtney Millers, Mark Brown, and many others, is a lack of data on police violence against dogs. This is not surprising given that there is not even an official national database that documents police killings of human subjects. The non-governmental databases that document lethal police violence in the United States—*The Guardian*, *The Washington Post*, *Fatal Encounters*, *Mapping Police Violence*, and a few state databases (Center for Homicide Research, 2017) – fail to document police killings of canines even though research suggests that the majority of firearm discharges by US police are directed at dogs (Bloch & Martinez, 2020). Therefore, the police shooting or killing of dogs is not an issue that should be taken lightly.

The lack of attention to police violence against dogs, then, is a problem that can only be rectified with sustained attention to this particular form of state violence. The state is a political organization characterized by compulsory membership where government agents use physical coercion as a means for ensuring compliance to the governing authority's will (Weber, 2005). This physical coercion ranges from an officer's use of physical force to mass incarceration to the use of derogatory language targeted at marginalized populations within American society. As geographers Stefano Bloch and Daniel Martinez have recently argued, "The realities of shootings associated with and at dogs reveals one of the insidious and rarely acknowledged manifestations of state violence enacted in and on vulnerable communities of color" (Bloch & Martínez, 2020a). Bloch and Martínez's (2020b) study, which is essentially the only one of its kind, examined incidents of canicide in both Los Angeles and Los Angeles County and found that more dogs were shot by police in impoverished neighborhoods than other neighborhoods. Geographically speaking, most police shootings of dogs were clustered in census tracts where "median household incomes [were] below the 25th percentile' ... 'whereas white majority tracts accounted for 91 dog shootings between 2010 and 2017, non-white majority tracks experienced 161 dog shootings and acts of canicide by police" (Bloch & Martínez, 2020b, p. 145). The implication here is that police violence against dogs can map onto police violence against the marginalized communities that have long experienced police violence in the most disproportionate of ways.

Second, dogs and other non-human animals have historically been subject to legal violence that resembles the legal violence often used to punish and police humans. For instance, the punishment and-or execution of pigs for infanticide was a normal part of life for at least two centuries. In 1379, two herds of pigs were pardoned by Philip the Bold, Duke of Burgundy upon the request of friar Humbert de Poutiers (Evans, 2009/1906); an executioner received 50 sous tournois for hanging a pig that “killed and murdered a child in the parish of Roumaygne” (Evans, 2009/1906, p. 336); a sow—“who had eaten the face and the arm of an infant boy” (p. 5)—was tried, convicted, sentenced, and executed for her crime in Falaise in 1396 (Johnson, 2012). Similar incidents occurred in 1403, 1457, 1494, 1499, and 1567 just to give a brief sampling (Evans, 2009/1906). Much more than pigs, though, dogs are “transit” in the sense that they freely cross the boundaries between culture and nature which places them outside the human control over these domains (Skabelund, 2008). Accounting for the harms inflicted upon animals by the criminal justice system and its agents unfetters our ability to reimagine police violence, policing, and even the criminal justice system itself. Incorporating police shootings of dogs into discussions regarding police violence opens another, and possibly richer, avenue for understanding how power weaves its way across diverse communities and populations (Bloch & Martínez, 2020).

Third, dogs have oftentimes been used as proxies for reinforcing social hierarchies within human populations. In Victorian society, a “carefully stratified

leisure activities...provide a valuable index of [one's] social status" (p. 229), and the dog's body—in the form of its breed—enhanced or detracted from one's social status (Ritvo, 1986). Where purebred dogs increased their owners' social standings, mixed breed dogs were perceived as the pet of the working-class (Ritvo, 1986). It was not uncommon during the Third Reich for the Jewish population to be spoken of as animals (e.g., dog, swine, cockroach, etc.) (Patterson, 2002). Many of the SS guards would attack prisoners with their dogs, and the command used by the guards would identify the dog as "Man" and the prisoner as "dog" or another animal (Patterson, 2002). Dogs owned by Jewish families were deemed "Jewish" by the Third Reich and subsequently shot (Sax, 2000). The dog has been used to police the behavior of women. Used as a pejorative, the term *dog* imposes upon women a standard of beauty established by a patriarchal society (Dunayer, 1995). Likewise, the term *bitch* is used to deny women an equal footing with men. As Dunayer (1995) points out, *bitch* is a term directed at women that denotes the individual as being malicious and selfish; yet, dogs are stereotypically loving. Even sexual violence is an aspect in the linkage between women and dogs. Breeding stands, oftentimes referred to as "rape stands" (Tsai, 2007; see also PETA, 2020), are used to restrain a female dog so that a male dog may breed with her. The use of such devices reinforces the perception of female dogs (i.e., bitches) "as a means to a useful, profitable, or prestigious litter" (Dayan, 1995). The use of the dog's body via its breed was heavily influenced by the social relations between the classes as well.

Class conflicts and a desire to distinguish oneself socially led to the creation of the Victorian dog fancy (Ritvo, 1986). The shows in which the dogs, and owners, competed had to be secure and meaningful in their hierarchy since “excellence” between and within breeds would reflect on the social statuses of the individual dog, the dog’s breed, and the dog’s owner (Ritvo, 1986). This symbolic transformation of dogs continues today. In the United Kingdom, dogs are used as both fashion statements and status enhancers (Davis, 2010). However, the current relationship between dogs and status enhancement reflects the fears of the middle-class regarding crime and the urban landscape. The term “status dog” in the United Kingdom is synonymous with the term “dangerous dog” and oftentimes used as shorthand for criminality (Maher & Pierpoint, 2011). The linkage between certain dog breeds and criminality is highlighted by the architect of the United Kingdom’s Dangerous Dog Act (1991), Kit Malthouse, who happens to also be the Minister of State in the Home Office and Minister of Justice at the time of this writing:

The dog has a special place in our psyche and the “bull-type” in particular has deep cultural resonance. So it is no surprise that one of the biggest problems the police face is persuading a magistrate that Satan, the eager doggy wagging its tail while a tearful family sobs in the gallery, is a canine thug, forcing people to cross the road and cantering round the park attacking other dogs and terrifying kids (Malthouse, 2009).

What makes the pit bull *dangerous* are the populations (e.g., poor whites and blacks) who the breed is associated with (Dayan, 2016). This pariah status of pit bulls and those oftentimes referred to as “bully breeds” finds its way into rap

lyrics as a way of celebrating the “otherness” (p. 32) of the breed and marginalized communities (Harding, 2010). The pit bull, then, shares the same disdain from the middle-class as the working poor who are commonly labeled as “white trash” or “thugs” unless someone from the middle-class steps in to “save” the pit bull (Dayan, 2016). As such, the dog’s physical body is symbolically imprinted with a society’s various social inequalities and forms of oppression. Therefore, the “targeting of dogs means the targeting of people” (Dayan, 2016, p. 80).

Police kill a large number of dogs every year with the majority of these killings go unnoticed and unrecorded. Some within the policing community are apathetic about this aspect of the policing profession. The number of dogs killed by officers of the Las Vegas Metro Police Department was viewed as “statistically insignificant” (p. 55) by their spokesperson when compared to the number of encounters their officers have with dogs, and a deputy from Harris County, Texas—which houses the city of Houston—stated, “If a dog turns and comes at a citizen, or the deputy, they have all right to use lethal force” (Blainey, 2014, p. 55). Yet, some officers have donned their dress uniforms in the past and stood saluting in a line leading to a veterinarian’s office as a police canine was walked inside by its handler to be euthanized (Dogtime, 2021). This contradictory stance toward the canine species raises an important question, why are some dogs demonized for their potential aggressive nature while other dogs with the same characteristics are valorized by the police and society? The purpose of this

dissertation is to examine how U.S. law rationalizes canicide by paying close attention to how the judiciary's construction of "dangerous dogs" coalesces with justifications and rationalizations of canicide. Therefore, this research project is organized around two broad, open-ended and intertwined research questions. As is the norm for much qualitative research, these broader questions lead to more narrowed and finer tuned questions as new concepts and narratives emerge (Altheide, 1996). The research questions for the current study are:

- 1: How does the law construct the police killing of dogs? That is, how do federal court cases frame justifications for and prohibitions against the police killing of dogs?
- 2: How does the judiciary's construction of police killing of dogs help us understand racialized police violence against human subjects?

Focusing on the law enables us to answer the aforementioned question, and other questions as well, because the law is the visible symbol of a society's social solidarity (Durkheim, 2014). However, "law mirrors a part of social life" (p. 52) since there may exist social relationships not regulated by law but rather by custom, thus making it private. "Above all, however, all law is public, in the sense that it is a social function, and all individuals are...functionaries of society" (p. 55). It is through law that the State forces compliance to the will of the collective (i.e., those in power); therefore, it is through law's approach to canicide that may illuminate other pathways for understanding the maintenance and reproduction of modern society.

CHAPTER TWO

METHODOLOGY

The current study focuses on judicial opinions because it through written judicial decisions that the judiciary communicates to the police, nation, and other courts what the current state of law is regarding a specific legal topic. It is also in these written opinions that the judiciary lays out the reasoning for the majority's decision as well as the reasoning for any concurring or dissenting opinion.

Ethnographic content analysis was chosen over other methods for the current study because it combines aspects of other methods (i.e., participant observation and content analysis) to create a robust framework for analyzing hidden power structures within documents (Altheide, 1996). Ethnographic content analysis also goes beyond traditional legal scholarship by providing the researcher the ability to illuminate the social relations embedded within the opinions' word choices, word ordering, metaphors, and the other processes that give the article its life.

Broadly speaking, an ethnography is a "social scientific description of a people" (p. 40) and the social realities that they inhabit (Vidich & Lyman, 2000).

At the heart of any ethnographic work is engagement with people. Using Altheide's (1996) method, I approached each federal decision as if I was speaking with the document's author. This mindset helped me immerse myself into the world that each federal decision was creating, much the same way that interviewing people allows the researcher to immerse themselves within their subject's social reality. Immersing myself into the documents I was reading

emotionally connected me to each case. Reading the federal decisions in this manner allowed me to address any possible emotional responses (e.g., anger, sadness, frustration, etc.) that might arise from reading the Sixth Circuit's decision. Reading the officers' explanations for why they shot the Browns' dogs elicited a sense of anger because the dogs were trying to escape the officers when they were shot. The short amount of time elapsing between the officers entering the Browns' home and the lead officer shooting the first dog likewise elicited a sense of frustration that the dogs were not given the opportunity to demonstrate that they were not a threat.

When these emotions began to arise, I would ask myself what I was feeling (e.g., anger, sadness, disgust, etc.) and what I believed was the cause of these feelings. I would then write down a brief note regarding these feelings and I continued reading the decision. These notes allowed me to understand the differing social realities emerging from my interaction with the document. One of these social realities regarded canicide within the *Brown* (2016) decision prior to my involvement and the other social reality was that which included me in its construction as well. Ethnographic content analysis is appropriate for this dissertation because it begins with the assumption that social meanings are embedded within various formats of communication exchange (e.g., rhythm, style, the context of the report, and other nuances) (Altheide, 1987). If the emotional response was too strong, I allowed myself a few days to process my emotional responses.

When conducting an analysis of a document, the researcher should “consider the original purpose of the document...and the [document’s] target audience” (Bowen, 2009, p. 33). Ethnographic content analysis (ECA) asks researchers to view documents as a symbolic representation of the cultural and social power structures that produce social life in the form of someone’s lived experiences as a member of a society (Altheide, 1996). Illuminating the cultural and social power structures is achieved by situating the investigator as an integral component at every stage of the research process. The importance of the investigator in ethnographic content analysis arises from the method’s highly reflexive design which is itself founded on the belief that documents are “social products” (p. 42) of the underlying power dynamics regulating the environment in which they are produced. For instance, some pro-police demonstrators in New York City wore shirts at a rally adorned with the words “I can breathe” on the front and “thanks to the NYPD” on the back (Graaf & Boyle, 2014). On their own, the words on these shirts have little to no meaning. However, the underlying cultural and social meanings of these shirts emerge when placed within context of the social unrest in 2014 which was sparked by the death of Eric Garner by the New York City Police Department whose last words were “I can’t breathe.” The researcher is asked to look at documents, such as the shirts worn by the pro-police demonstrators in 2014, in relation to what is known about the social reality in which the document exists (Altheide, 1996). The goal of ethnographic content analysis is not to decipher the intent of a document’s author, but rather to

understand how the underlying power structures of social life influence and are influenced by the document's existence (Altheide, 1996).

Documents are defined by Altheide (1996) as any item that is both retrievable and embedded with social and/or cultural meaning. Transforming a document (e.g., menu, newspaper, or judicial decision) into data occurs when the researcher uses a protocol that guides the researcher's interactions with the document as a cultural and social symbol. As a representation of social life, documents can alert us to those nuances within social life that regulate social interaction by what is included and excluded from the communication process. For instance, a receipt is an itemized list communicating what someone purchased and how much they spent on the listed item(s). Although receipts are both relevant and retrievable which makes them documents, they are not data if their purpose is to simply list items for recordkeeping. However, receipts become data when the researcher approaches these documents as a cultural marker for understanding how gender inequalities are reinforced through economic practices such as a pink tax. Although documents are created independent of the researcher and are believed to be unaffected by the researcher's presence (Bowen, 2009), the analysis of a document is influenced by the researcher's prior knowledge (Thunstedt, 2017). As Thunstedt (2017) addressed in his study examining how the concept of masculinity intersects with the concept of the ideal father in magazines who's target audience is fathers, his analysis of the selected magazines is influenced by his sociological knowledge. This knowledge directed

Thunstadt's (2017) attention toward certain topics and concepts. Likewise, my sociological knowledge and knowledge of the criminal justice system directed my attention toward certain concepts. Taking a few days off between each read-through of the selected judicial opinions provided more opportunities for themes and patterns to emerge that I may have overlooked during the first read-through.

The purpose of ethnographic content analysis is to “document and understand the communication of meaning, as well as verify theoretical relationships” (Altheide, 1987, p. 68). Guiding this purpose is ethnographic content analysis’ premise that social life is partially constructed from a reiterative process of communication and interpretation that defines the subject-object relationship along with those aspects of this relationship (e.g., people, places, or things) that are important for consideration when constructing a particular moment of social life. Even the social and cultural meanings embedded within language are themselves influenced by factors such as one’s race, gender, sexuality, religion, socioeconomic status, and where one lives (Altheide, 1996). As Sandberg (2010) notes, “people situate their stories within certain social structures and historical events” (p. 1053) with the social meaning(s) the storyteller wishes to convey partially elucidated by their choice of social structures and historical events. It is in regard to these contextual factors that ethnographic content analysis attempts to understand the social situations embedded within the text of a document, and it is through ethnographic content

analysis' reiterative process that these embedded meanings emerge from a document (Altheide, 1996).

Ethnographic Content Analysis Process

Ethnographic content analysis is comprised of 12 steps divided into five stages: (a) documents, (b) protocol development and data collection, (c) data coding and organization, (d) data analysis, and (e) report (Altheide, 1996, p. 23). In the document stage, the researcher defines the issue to be investigated, constructs a research question, explores the various types of documents that could be used to answer the research question, and determines the appropriate unit of analysis. In the protocol stage, the focus is on developing guidelines for answering the appropriate questions (Altheide, 1996). For instance, Meyer (2001), in studying two mergers within Norway's financial industry, developed a design that guided the "(1) selection of cases; (2) sampling time; (3) choosing business areas, divisions, and sites; and (4) selection of and choices regarding data collection procedures, interviews, documents, and observation" (p. 332). Collecting the appropriate cases allows Meyer (2001) to examine the "sensitive issues such as power struggles between the two merging organizations" (p. 332) in his study. The protocol phase is also where the researcher determines if their design is capable of obtaining the necessary data to answer the study's research question (Altheide, 1996). Bourgois and Schonberg (2009) used collaborative photo-ethnography to document the lives of drug users in San Francisco, California without inadvertently exploiting the participant's intimacies, joys,

struggles, suffering, and losses. Collaborative photo-ethnography relies on the presence of two or more researchers working closely together to collaborate on field notes and photographs so that they could later “compare what [they] had seen, heard, and felt” (Bourgois & Schonberg, 2009, p. 11).

Once the appropriate form of document has been chosen and a working protocol established, the next phase is to collect the data. The final two stages are data analysis and the reporting of findings. In ethnographic content analysis, analyzing data consists of repeatedly reading and revising codes as necessary, as well as comparing and contrasting any differences which is facilitated by noting “surprises and curiosities about...cases and other materials in your data” (Altheide, 1996, p. 42). The data analysis stage requires multiple read-throughs of documents and refinement of key words, codes, and concepts by comparing within categories and between categories looking for themes and patterns. During each phase of the coding process the researcher is reevaluating and reflecting on the information that is emerging.

Data

Data for the current project comes from federal judicial decisions which are comprised of the majority's opinion and any concurring or dissenting opinion addressing the constitutionality of an officer's involvement in canicide. Federal judicial decisions from the federal level were chosen as a primary data because federal courts have jurisdiction over matters regarding the United States Constitution, as well as matters involving the United States government, federal

laws, and controversies between the states (United States Courts, n.d.). Related to the federal judiciary's jurisdiction, Chief Justice Marshall, in *Marbury v Madison* (1803), established the judiciary's authority to declare a law unconstitutional. Finally, decisions made at the federal level are binding on the lower courts (i.e., states courts and lower federal courts) that fall within a the deciding court's geographical jurisdiction (The Writing Center at Georgetown University Law Center, 2017). However, the decisions from one federal district are not binding on courts in other federal districts since each federal district holds an equal status with the other federal districts. Decisions by the Supreme Court of the United States, however, are binding on every court at all levels (i.e., local, state, and federal).

Countries like the United States which uses the common law method emphasizes the authority of case law which has the goal of finding an "identical case that supports the advocate's legal reasoning" (Nolasco, Vaughn, & del Carmen, 2010, p. 5). In the United States, court decisions establish the paradigm within which the law exists and is practiced (Bintliff, 2007). Binding (i.e., *stare decisis*) is important aspect of the American judicial system because it creates a sense of uniformity and predictability among cases with similar facts. As Justice Frankfurter stated in *Helvering v Hallock* (1940), the concept of *stare decisis* "represents an element of continuity in law, and is rooted in the psychologic need to satisfy reasonable expectations" (p, 119). That is to say, the American judicial system is founded on the belief that factually similar cases should have the same

outcome (Walker, 2016). For a prior judicial opinion to be binding on subsequent cases, the prior decision must be (1) factually similar with the case currently before the judiciary with more legal authority given those decisions whose factual backgrounds are highly related to the factual background of the current case, and (2) the prior decision must come from the same court that is hearing the current case or from a superior court within the geographical jurisdiction of the court hearing the current case (Walker, 2016).

Data Collection

Legal documents were collected using Nexis Uni (formally Lexis Nexis). Collecting the federal judicial decisions for inclusion in this dissertation was done through a technique similar to “snowball” sampling that is called shepardizing. The *Shepard’s Citations* is a method for verifying information (Danner, 2007), and shepardizing is the process by which a judicial decision is vetted to determine if that court’s ruling is able to be cited as legal precedent. Through the process of shepardizing, a researcher can review any subsequent appellate history (e.g., positive, negative, and/or neutral) along with all subsequent judicial decisions citing the selected decision(s). I began the shepardizing process with the Sixth Circuit’s decision in *Brown v Battle Creek Police Department* (2016). This decision was chosen because the United States Court of Appeals for the Sixth Circuit affirmed the constitutionality of police killing dogs because of the perceived threat arising from a dog’s barking. A read-through of the *Brown* (2016) decision allowed me to locate previous decisions that the Sixth Circuit

cited as a binding authority addressing the constitutionality of canicide. After this initial read-through, the *Brown* (2016) decision was then shepardized to locate (1) more recent cases concerning the constitutionality of police killing dogs and (2) to determine how these subsequent judicial decisions refine the decision made in *Brown* (2016). The background of each shepardized decision was reviewed to determine if the case itself involved an officer shooting a dog. Judicial decisions that did not involve officers shooting dogs (fatally or nonfatally) were excluded from analysis. Furthermore, cases were excluded if subsequent appellate history overruled the decision. For those cases that have been overruled, I used the overruling opinion in lieu of the original case. However, if a case was overruled only in part, and the part that was overruled does not concern the police shooting the dog(s), then the case was still included in the study.

Data Analysis

Data analysis began with multiple read-throughs of the Sixth Circuit's decision in *Brown v Battle Creek Police Department* (2016). This first read through of the *Brown* (2016) decision was done to determine what the Sixth Circuit specifically decided regarding the killing of the Browns' dogs by police. That is, the focus of the initial read-through was to obtain information on the background of the incident, the officer's version of events, the family's version of events, the judicial decision (e.g., affirmed or reversed), the majority's reasoning for the decision, and any dissenting opinions along with their reasoning. From

this initial read-through, I was able to determine that the dogs' physical act of barking was not what the Sixth Circuit used to justify the dogs' deaths at the hands of the officers. Rather, the dogs' barking was the vocal representation of the dogs' aggressiveness and threat to the officers' safety. From this initial read-through, I was able to determine that the dogs' physical act of barking was not what the Sixth Circuit used to justify the dogs' deaths at the hands of the officers. Rather, the dogs' barking was the vocal representation of the dogs' aggressiveness and threat to the officers' safety. I was also able to determine from this initial read-through that any perceived or actual threat to an officer's safety, even if it comes from a dog, is justification for the use of deadly force.

A second read-through was conducted to confirm my understanding of the case gained from the first reading, as well as allowing the researcher the opportunity to locate any additional information pertinent to the Sixth Circuit's decision missed during the first read-through. The third read-through of the decision was a more focused reading that helped me develop a better understanding of the social reality that the Sixth Circuit was constructing. Through this third reading I was able to see the different forms that law takes. One form is the law as a profession while another form is law as a set of codes and rules (Hutchinson & Duncan, 2012). A final form is the law as a scholarly pursuit (Hutchinson & Duncan, 2012). Knowing these different forms helped me better understand the different social realities coexisting within each of the federal judicial opinions. It was during my fourth read-through that I started noting

similar frames and themes emerging from each judicial opinion. For instance, almost every judicial opinion presented the background of the case (e.g., the events and circumstances that led to canicide) before moving into discussing why the court hearing the case has the jurisdiction to act as an arbiter regarding the incident of canicide before them. It was in this background section where the judge(s) would lay out the reasons for why they did or did not believe the officer's version of the event was more valid than the version presented by the dog's owner, and it was these facts that the judge(s) relied upon to justify their decision. The judicial opinions examined usually had a section where the key concepts such as summary judgment or qualified immunity are defined and the restrictions, if any, placed on the judiciary by prior judicial decisions. It was also noted that the judicial opinion discussed and usually rule on each allegation (e.g., does the shooting of a dog constitute a seizure and the intentional infliction of emotional distress) separately. These frames and themes were developed and refined through subsequent read-throughs because, as Altheide (1996) points out, a key aspect of examining documents is illuminating latent meanings embedded within the document's frames, themes, and discourses which are themselves influenced by how the author presents the information. The process used by ethnographic content analysis to illuminate and refine the latent meanings in the themes, frames, and discourses in a document's story is akin to the process used in thematic analysis.

Thematic analysis is a way to examine stories within a document so that the researcher can tease out any latent meanings, desires, and/or beliefs the storyteller wishes to convey through their story by their choice of which events are important for inclusion in the story (Riessman, 2008). For instance, Tamboukou (2003) examined the letters and other literary works of women teachers in late nineteenth century England and found that simple acts such as locking one's door was viewed as a form of self-empowerment and independence. Although the emphasis of thematic analysis is not focused on "the telling" of the story (Riessman, 2008, p. 54), the storyteller's word choices do help us locate dominant power structures hidden with the text of a document. Again, Tamboukou's (2003) examination of the literary works of women teachers revealed the "women's self-writings present selves on the move, always attempting to go beyond the boundaries of their family, their locality, their town or city and, in some cases, their country" (p. 59). The word choices these women used, such as "*go out, get out, be out, spread my wings, run away, leave*" (p. 58), highlight the restrictive position English society took regarding women's locomotion. Teaching for these women was a form of resistance to the existing power structures at that time (Tamboukou, 2003). Themes and the discourses used to construct them may be viewed as the "basic 'truth' the story is designed to illustrate" (ReadingVine, 2018).

Determining what is the basic truth in a story is achieved by locating language, patterns, and themes within the document that describe the

phenomena under investigation (Fereday & Muir-Cochrane, 2006). These themes and patterns emerge through a careful reading and re-reading of each document (Bowen, 2009). Regarding the current study, themes such as officer safety were easy to identify and develop since the Sixth Circuit's opinion was very explicit about its importance to the decision. Other themes, however, required multiple read-throughs to tease out. For instance, one of the patterns that emerged from multiple read-throughs was the dismissal of the victim's extensive history with their dogs as authoritative regarding the dogs' behavior while giving extraordinary weight to the testimonies of the officers regarding dogs' behavior from their brief encounter with the dogs. Another pattern is the extraordinary weight the judiciary gives to officer safety as a justification for the killing of another being. A difference between thematic analysis and other qualitative methods, however, is that the story is kept intact by developing themes from each document instead of developing themes from all the documents as a single body of work (Riessman, 2008). This procedure is similar to the process put forward by Altheide (1996) in which the researcher is directed to return to previous stages and rethink their initial understanding as they move forward with analysis of a new document. Using this method as a guide to analysis, I returned to the Sixth Circuit's opinion in *Brown v Battle Creek Police Department* (2016) periodically after reading several new cases addressing canicide. The goal was to determine if the themes in the *Brown* (2016) decision were consistent across various federal judicial opinions addressing canicide and

across time. Following this reiterative method, I noticed a pattern emerging from the federal opinions analyzed which indicated that most of the dogs were shot and/or killed by police were on their owner's property.

The knowledge gained from the fourth read-through was then used to reanalyze the Sixth Circuit's decision in *Brown* (2016) to (1) determine if Browns' dogs were also on their owner's property and (2) if so, reevaluate the Sixth Circuit's decision in light of this knowledge. Again, the purpose of this reiteration process with data analysis was not to determine how well the pattern or theme "fit the data," but to develop a better understanding of how and why a pattern or theme exists. Data reiteration continued until a refined pattern or theme was developed. This process led to the following patterns or themes: the production of space (e.g., private spaces vs public space, personhood, etc.), the four-legged serial killer, and dogs as familiars. A final read-through of the Sixth Circuit's *Brown* (2016) decision was conducted to help refine the social reality the Sixth Circuit was constructing regarding police violence against dogs, specifically prototypical accounts of how dogs might be legitimately and illegitimately killed by police officers. Once this final reading was finished, the themes developed from the within-case analysis were used for a cross-case comparison.

Ethnographic content analysis focuses on the themes, frames, and discourses of a document to illuminate those things that make our experiences recognizable to others used for communicating social and cultural meanings between people (Altheide, 1996). It is through the themes, frames, and

discourses that we use in our everyday lives that help construct our social realities. (Abbott, 1992). Ethnographic content analysis is a method that allows the researcher to extract the social relations embedded within the document's narrative; that is, the author's word choices, word ordering, and chosen metaphors (Altheide, 1996). In Hirschfield and Simon's (2010) study of civilian deaths by police, they found that a common theme was discussing the deceased's criminal history usually within the first paragraph. Likewise, news stories use euphemistic language (i.e., replacing the word "kill" with "fatal shooting") to dilute the act of killing another human being by a state actor (Hirschfield & Simon, 2010).

Comparing themes across different cases and/or formats (e.g., newspapers, TV shows, magazines, etc.), or what Altheide (1996) refers to as "tracking discourse" (p. 70), highlights the narratives that connects someone's social reality to that of another person. This connection occurs because narratives oftentimes involve "relations between relations" (Fairclough, 2010, p. 3). For instance, in Miller, Carbone-Lopez, and Gunderman's (2015) examination of women methamphetamine users, a dominant theme among their sample was redemption from drug user to a traditional cultural perspective of motherhood. However, it is practically impossible for an event story to include everything that 'happened'; therefore, the individual or group must choose which events they believe are the most important. Narrative's raw materials are extracted from resources and frameworks established by the larger society. The cross-case

comparison used federal judicial decisions addressing the issue of officers shooting domestic dogs. An aspect of the cross-case comparison focused on determining if the same themes and frames found in the Sixth Circuit's opinion in *Brown* (2016).

Appropriate cases for the cross-case comparison were selected by first locating those federal decisions cited by the Sixth Circuit in its *Brown* (2016) decision and then shepardizing *Brown* (2016) to locate decisions citing the Sixth Circuit's decision as precedent. These shepardized decisions also provided an opportunity to locate other decisions addressing the issue of officers shooting dogs besides that of *Brown* (2016). A within-case analysis was conducted for each of the decisions located via the Sixth Circuit's *Brown* (2016) decision. The same data-reiteration process used in *Brown* (2016) was performed on each of the selected decisions. Although each within-case analysis was performed with the intent of allowing patterns to emerge organically as with *Brown* (2016), the researcher was cognizant that the themes developed in the *Brown* (2016) analysis were operating in the background of my mind which directed my attention to specific words or phrases. When these incidents happened, they were noted in the column of the case being analyzed, on a piece of paper, or on a Post-it note so that the read through could continue without dwelling on any possible connections between the case being analyzed and its relationship to other cases. This safety measure was loosened with each subsequent re-reading of a case. For those patterns that emerged which did not relate to the patterns in

the Brown (2016) decision, a truncated data-reiteration was performed to determine if a new theme was developing or if the pattern was similar but not the same as the already developed themes. Any pattern or theme emerging from the latter within-case analyses that was similar to those from the Sixth Circuit's decision helped refine the themes in *Brown* (2016) by providing the needed caveats. The caveats found in the Sixth Circuit's decision in *Brown* (2016) provided themes and frames that I could look for in subsequent decisions addressing canicide which would help illuminate similar thoughts and behaviors that arise across locations and individuals (Fetterman, 2010) that justify the killing of dogs by police.

CHAPTER THREE

VIOLENCE AND THE POLICE

One of the obstacles to reimagining the criminal justice system is defining the parameters that constitute the criminal justice system. How does the violent death of a dog at the hands of the police perpetuate the inequalities within the criminal justice system? What does this violent death mean to victims of police violence and to society in general? The answer appears to present itself when not viewing the criminal justice system simply as cops, courts, and corrections. Moving beyond these three pillars of the criminal justice system allows us to account for the social relationships that underlie the formation and passage of the laws the police enforce, as well as account for the role of the police and the court system, as well as the role of the Constitution, the local communities, and that of the larger populace.

Refocusing my perspective to approach the criminal justice system from a holistic perspective allows me to rephrase my initial question: How does the violent death of a dog at the hands of the police sustain the current state of the criminal justice system, as well as ensure its continued survival? How does the police killing of dogs shape the lived experiences of those within the larger community beyond the individual's potential interaction with the three main pillars of the criminal justice system? Finally, in what ways does violence sustain the criminal justice system's "lifeforce." The first step to answering these questions

and many others, is to begin with what we know about the relationship between violence and state power.

Research examining officer involved shootings extends “back more than 25 years” (p. 238); yet, there is no single governmental repository that can be accessed to determine patterns or trends even though police departments collect information on officer involved shootings (Alpert, 2015). Although the Federal Bureau of Investigation has data on all lethal and non-lethal violence against police by citizens, the department has no real data on the reverse (Cohen, Gunderson, Jackson, Zachary, Clark, Glynn, & Owens, 2019). Therefore, no one knows how many people are killed annually by police (Hirschfield, 2015). Although an officer’s decision to use deadly force is the result of “a contingent sequence of decisions and resulting behaviors” (p. 116), the final decision is made from the information gathered during the police-citizen encounter (Binder & Scharf, 1980). Complicating matters, however, is that the police’s use of physical force is applied arbitrarily. Typically, the police do not direct their force at the elderly, teenagers from the middle- or upper-class, a religious leader, or other groups stereotyped as non-threatening (Binder & Scharf, 1980). Rather, the target of police violence is “most likely to be a black or Hispanic male, between the ages of 16 and 30” (Binder & Scharf, 1980, p. 114) which in turn creates a perception within the targeted populations that the police are to be hated and scorned. The officer comes to symbolize the oppression and hatred felt by the youth, as such, any attack on the officer is seen as a blow to the oppressive

structures (Binder & Scharf, 1980). Even with these nuances and limitations, the authority to use force as a means for resolving situations has been a component of policing since its inception (Bittner, 1970; Klockers, 1996; Micucci & Gomme, 2005; Westley, 1953). Any discussion regarding police violence, however, must address the fact that a consensus does not exist as to which behaviors constitute an act of police violence (Lersch & Mieczkowski, 2005).

Violence and the Police

The term violence appears reserved for those instances when some believe that the police have crossed an imaginary line demarcating legitimate force from police violence. Kania and Mackey (1977) argue that “[f]orce implies the exertion of power to compel or restrain the behavior of others, as well as physical action” (p. 29). *Force*, under Kania and Mackey’s (1977) conceptualization then, implies a legitimate use of physical coercion while violence may be best understood as the illegitimate (e.g., illegal) use of physical coercion. Adding another layer of complexity to the definitional quagmire is that force comes in many different forms (Klockers, 1996), such as verbal commands, handcuffing a suspect, or even using different hold techniques to restrain a suspect (Garner, Buchanan, Schade, & Hepburn, 1996; Ristorph, 2017). Furthermore, some argue that force may be “*both* abusive of the rights or dignity of citizens *and* necessary and appropriate police conduct” (Klockers, 1996, p. 7; emphasis in original). That is, the level of force used by an officer, along with the officer’s behavior, may be shocking to the citizenry’s conscious, but it may be

necessary to effectuate an arrest that falls well within constitutional parameters. Even with the difficulties arising around defining what constitutes “force,” a pattern emerges which indicates that the application of force comes in three general forms: self-defense, limited use, and virtually unrestricted (Bittner, 1970).

In the first form- self-defense- force is used by an individual (usually a non-deputized citizen) to protect themselves from an attacker with some states even establishing limitations on when a citizen can use counterforce and the degree of counterforce one is permitted to use (Bittner, 1970). The second form – limited use – allows individuals working in certain professions (e.g., correctional officers) the right to use force as a means of effectuating the performance of their duties, but only against those individuals remanded to their care (Bittner, 1970). In *Whitely v Albers* (1986), the United States Supreme Court had to decide if the Eighth Amendment to the United States Constitution prohibited the shooting of an inmate during the quelling of a prison riot. According to the Court, the answer is no.

The infliction of pain in the course of a prison security measure, therefore, does not amount to cruel and unusual punishment simply because it may appear in retrospect that the degree of force authorized or applied for security purposes was unreasonable, and hence unnecessary in the strict sense (*Whitely v Albers*, 1986, p. 319).

The significance of *Whitely v Alber* (1986) is that the United States Supreme Court’s decision continues a judicial trend of providing prison administrators and personnel more leeway in dealing with inmates, especially during emergency situations (del Carmen, Ritter, & Witt, 2008). So long as a correctional official

uses force with good faith for restoring order and not done malicious or with sadistic intent, then there is no violation of the Eighth Amendment's prohibition against cruel and unusual punishment (*Whitely v Albers*, 1986). The Court solidified this decision when it declared that "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause" (*Whitely v Albers*, 1986, p. 319). It should be noted that the Court's decision in this case only applies to the use of deadly force (del Carmen, Ritter, & Witt, 2008). Excessive physical force may constitute cruel and unusual punishment even in situations where an inmate does not suffer serious injury (*Hudson v McMillian*, 1992). As with the use of deadly force, however, the use of force which does not result in serious injury must be done with malicious or sadistic intent on behalf of the correctional personnel (del Carmen, Ritter, & Witt, 2008). Again, force applied under good faith as a method for restoring order in a correctional facility does not rise to the level of a constitutional violation.

The final form of force—virtually unrestricted—is reserved for those individuals working in an official policing capacity (Bittner, 1970). One of the biggest misconceptions regarding the application of force by police, however, is that the force must be equal to the threat encountered by the officer. "[C]onstitutional doctrine does not require proportionality. The officer's force may far exceed the suspect's resistance; indeed, that is the point- to overcome resistance" (Ristroph, 2017, p. 1209). Over the years, American society has

gradually imparted more authority to the police by broadening the types of disputes in which the police have the authority to intervene (Ristroph, 2017). Accompanying this broadening of police responsibility is an expanding authority to use violence as a resolution technique, and the result of this expanded authority is a decrease in the time between actual or perceived resistance and the application of force including deadly force (Ristroph, 2017). Although, law enforcement agencies provide officers with use of force policies to help guide their decision-making processes, these policies operate on “the principle that disobedience is not to be tolerated, and force is the logical result of any resistance” (p. 1209) and that escalation of force will continue until the suspect surrenders or is dead (Ristroph, 2017). The contentious nature of using force as a resolution technique has not been lost on the police. “Some police departments have sought to jettison the phrase ‘use of force’ altogether; a favored replacement is ‘response to resistance’” (Ristroph, 2017, p. 1213). This change in terminology may appear innocuous, but it subtly shifts the onus of responsibility for a citizen’s injuries or death from the police to the citizenry. The term “use of force” implies that the police are proactive in the application of force whereas the term “response to force” implies a reactive application.

Setting aside dissensus on what police violence is, distinctive patterns are seen regarding which officers are most likely to engage in problem behaviors. First, it has been shown that the “problem” officers are usually younger with less experience, and likely to initiate a police-citizen encounter (Lersch &

Mieczkowski, 2005). Garner, Maxwell, and Heraux (2002) found that younger officers use more force than older officers. Second, a pattern emerges which shows that male officers receive more complaints of excessive force than female officers (Lersch & Mieczkowski, 2005). Again, Garner and colleagues (2002) found that female officers use less force than male officers. Third, officers who have more complaints lodged against them make twice as many index arrests and three times more arrests overall compared to officers who have fewer complaints against them (Brandl, Stroshine, & Frank, 2001). Fourth, the complaint-prone officers are more likely to work in areas with a high crime rate (Brandl, Stroshine, & Frank, 2001), and it is in these high crime neighborhoods where younger officers (i.e., less years on the force) are usually assigned during the early years of their policing career (Lersch & Mieczkowski, 2005). Using force to coerce compliance from the public, though, has left many departments and their officers lacking public support (e.g., legitimacy) and appearing corrupt (Lersch & Mieczkowski, 2005).

The legitimacy of a police department and the authority of its officers, then, is contingent on the citizenry accepting that the state has the right to dictate appropriate behavior and that those whom the state chooses to enforce these standards have the approval of the populace to do so (Gerber & Jackson, 2017; Sunshine & Tyler, 2003; Tyler & Jackson, 2014). “Once legal authorities are seen as legitimate, people will be more likely to engage in normatively desirable law-related attitudes and behaviors” (Gerber & Jackson, 2017, p. 82). When this

perception is not met, and an officer's use of force transitions into what some might believe is "violence," cooperation from the citizenry becomes limited. Therefore, a police department's legitimacy is also founded in the belief that each citizen is treated the same when interacting with the police (Holmes, Painter, & Smith, 2018). Yet, research has found that blacks are more likely than whites—sometimes 5 times more likely depending on the question—to believe that police misconduct happens very often (Weitzer & Tuch, 2004) and that those groups who are the least targeted by law enforcement hold a more favorable perception of the policing institution (Ross, 2000). Mirroring the findings regarding public perception of police misconduct, individuals from marginalized populations are more likely to believe that the police consistently use race as a factor in their decision-making process (Graziano, Schuck, & Martin, 2010). As such, police violence may be one of the symptoms of the "enduring racial and ethnic divisions in American society" (Smith & Holmes, 2003, p. 1037).

For some, the police have an enduring legacy of using state approved violence "to protect the power and privilege of certain segments of society" (Stults & Baumer, 2007, p. 507). Slave patrols arose during the antebellum period as a way to regulate the free movement of slaves and they became the *all-seeing eye* of the slave's master (Taslitz, 2006). Many whites from the lower rung of the white hierarchy were overwhelmingly selected for patrol duties because many plantation owners felt that serving on a patrol regulating their property was below their social station (Taslitz, 2006). Similarly, modern police are used as an

instrument for regulating the movement of people of color as well as promoting conflict between poor Whites and poor Blacks to prevent these groups from potentially uniting against those within the dominant classes of American society (Alexander, 2012). Stults and Baumer (2007) found that as one moves from all-white locales to locations where approximately one-quarter of the population is black, the number of officers increase by approximately 15 percent. Likewise, areas that had a growing population of black residents also had larger police departments (Stults & Baumer, 2007). At a certain point, however, this pattern seems to reverse. Holmes, Painter, and Smith (2018) found that as the percentage of black population increases, police-caused homicides decrease (Holmes, Painter, & Smith, 2018). Creating civil discontent among the populace allows the dominate group to create a criminal class, which is oftentimes racialized, that becomes a viable construct for maintaining the dominant racial and economic order of society (Alexander, 2012).

Bor, Venkataramani, Williams, and Tsai (2018) examined the responses from over 100,000 black Americans regarding their exposure to police killings and self-reported mental health. Bor and colleagues (2018) found that the more exposure respondents had to police killings was associated with a decrease in the respondent's mental health, "specifically, estimates imply that police killings of unarmed black Americans could contribute...55 million...excess poor mental health days per year among black American adults in the USA" (p. 308). Results from Bor and associates' (2018) study not only highlight the importance of

structural racism on the mental health of black Americans, but indicate that those within the affected communities may have “heightened perceptions of threat and vulnerability, lack of fairness, lower social status, lower beliefs about one’s own worth, activation of prior traumas, and identification with the deceased” (p. 308). Although Garner and colleagues (2002) found a difference between white and black suspects regarding the use of physical force by police, this difference vanished when suspect resistance was added to their model.

Every police officer is afforded a certain degree of autonomy (i.e., discretion) to carry out the duties of the profession. An officer’s discretion—that is, the leeway to choose a specific course of action(s) from a variety of choices (Mastrofski, 2004)—allows the officer to choose the course of action(s) they believe is most effective for resolving the issue at hand. When exercising their discretion, officers may use factors beyond the suspect’s behavior (e.g., location, weather, or even time of day) in their decision to use a specific course of action. The role of discretion is especially important when an officer decides to shoot.

Correll and colleagues (2007) examined whether police officers were better at discerning armed suspects from unarmed suspects compared to non-law enforcement professionals. Results from Correll et al.’s (2007) study demonstrate that officers were more discerning than lay people regarding the shooting of Black “suspects,” but they found that officers took less time in their decision-making process (i.e., shoot or don’t shoot) when the suspect was either armed and Black or when the individual was unarmed and White. In other words,

officers were not as quick to shoot compared to non-law enforcement subjects; yet, both officers and the non-law enforcement participants were able to make quicker decisions when cultural stereotypes were met (i.e., Black as threatening and White as nonthreatening). Similar results were found by Correll, Urland, and Ito (2006); Nieuwenhuys, Savelsbergh, and Oudejans (2012) who found that officers were more likely to shoot when anxious; Kleider, Parrott, and King (2010) who found that when officers with limited working memory capacity were “threatened and experiencing highly arousing negative emotion” (p. 716) were at a higher risk of committing a shooting error; and Ma and Correll (2011) who found that “target prototypicality moderates racial bias” (p. 395). Even though the police have what appears to be unlimited authority to use any level of force deemed necessary, the form of force is itself governed by three factors: criminal law, civil liability, and fear of a scandal (Klockers, 1996).

Governing Violence

Criminal law sets forth the legal parameters that hold officers liable for any misuse of their powers; yet, exercising these laws very rarely occurs (Klockers, 1996; Hughes, 2001). Reasons for the rare enforcement of these laws include, but are not limited to, the reluctance of courts to charge officers with a crime and the reluctance of juries to find officers guilty when they are charged (Klockers, 1996). Prosecutors are reluctant to prosecute officers partly stems from fear of alienating those very individuals who the prosecutor must rely to effectively perform their prosecutorial duties (Hughes, 2001). “Moreover, victims in such

cases often have personal and legal histories that render them unsympathetic or non-credible as victims” (Hughes, 2001, p. 241). Due to the high burden of proof and reluctance of prosecutors to bring charges against police, many victims have chosen to pursue civil litigation as a means of governing police behavior. Civil liability suits, with their lower burden of proof, generally focus on monetary rewards instead of the loss of an officer’s liberty. Even with this more lenient jurisprudence format, though, it is difficult to hold officers accountable for their actions. Hughes (2001) found that approximately 18 percent of officers report personal experiences with being sued in civil court for behaviors relating to their job. For those officers who do find themselves in court over their actions during a police-citizen encounter, research suggests that the outcome is not that bad. Kappeler, Kappeler, and del Carmen (1993) found that 52 percent of officers prevailed against the lawsuits brought against them between 1978 and 1990. In the other 48 percent of cases, the officer lost at least one legal motion they put forward, such as a motion for summary judgment (Kappeler, Kappeler, & del Carmen, 1993). It should be kept in mind that losing a legal motion, such as a request for the suit to be dismissed, does not automatically equate to liability on part of the officer or the municipality for which the officer works (Kappeler, Kappeler, & del Carmen, 1993). Out of the cases brought against police officers, plaintiffs won 44.4 percent and 59.6 percent of their cases between 1978 and 1990 respectively (Kappeler, Kappeler, & del Carmen, 1993). The average award for excessive use of force was \$187,503 USD (Kappeler, Kappeler, & del

Carmen, 1993). Overall, however, 64.3 percent of officers believe that civil suits do not deter officers from violating someone's civil rights (Hughes, 2001). In other words, the judicial system appears to not have any deterrent effect on officer behavior even when monetary damages are awarded.

The third governing factor—fearing a scandal—has the potential to be the most effective at regulating an officer's behavior. Prior to the advent of the camera phone and the internet, incidents of police misconduct rarely made it to the public's attention (Brown, 2016). When police misconduct did reach the public's attention, it was usually the officer's version of events against that of the citizen (Brown, 2016). The camera has provided an opportunity to reverse the state's panoptic gaze by allowing the citizen the power to engage the police through a media format not controlled by officers. This form of counter-surveillance—oftentimes referred to as *sousveillance*—switches the traditional roles of the police and the citizen as a way of “preventing the invisibility of police violence” (Brucato, 2015, p. 58) by tethering police legitimacy with transparency. An aspect of transparency is allowing the public to surveil the activities of state agents (Brucato, 2015); therefore, police legitimacy diminishes whenever they engage in any behavior that appears to restrict the citizen's surveillance abilities.

Brown (2016) examined how officers in two Canadian cities—Toronto and Ottawa—perform their duties in a world where a private citizen has the technological ability to record the officer's behavior at any time. Out of the 231 patrol officers participating in Brown's (2016) study, 51 percent reported that the

possibility of being recorded by a random person was always on their minds with approximately 69 percent reporting that this was a frequent, if not primary, topic of discussion between them and their colleagues. As for an officer's behavior during the performance of his-her duties, approximately 50 percent reported using less physical force than they would have prior to the increased ability of citizens to record police activities. This sentiment is summed up by one participant is quoted as saying, "These cameraphones [sic] everywhere is a game-changer and anyone who tells you they are not concerned or they haven't changed how they do some things is full of shit" (Brown, 2016, p303). Results from Brown's (2016) study indicates that this reverse-panopticism has the ability to alter an officer's behavior and potentially prevent both a "black eye" for a local police department and unnecessary physical harm to a suspect. "The new transparency undergirds the political strategies...most activists and other civil society groups focusing on police violence, [as well as] motivates considerable political activity on matters of crucial social and environmental importance" (Brucato, 2015, p. 51). Yet, the police profession remains resilient against change even with all the advancements in audio and visual technologies.

In the case of Eric Garner, there was ample video footage of Officer Pantaleo choking Eric Garner which eventually led to the latter's death. However, a grand jury declined to indict Officer Pantaleo even after watching the footage and hearing from both the officer and witnesses (Goodman & Baker, 2014). Similarly, the officers involved in the death of Tamir Rice in 2014 were not

indicted for their role in the 12-year-old's death (Fantz, Almasy, & Shoichet, 2015). According to the prosecutor in the case, "Given this perfect storm of human error, mistakes and communications by all involved that day, the evidence did not indicate criminal conduct by police" (Fantz, Almasy, & Shoichet, 2015, para. 3). This inability of video footage and other forms of external control to govern police behavior highlights what should be another governing factor—the media.

In the United States, the ideological perspective regarding the media, is that of an autonomous institution searching for the "truth"; yet, the making of news is a collaborative process between the reporter and the government official (Schudson, 2000). Many journalists, though, cultivate government officials because of their access to restricted information and these very government officials sometimes seek out journalists so that selected information may be passed along to the public (Schudson, 2000). This intimate relationship between the government and the media has led some to wonder whether the media is simply another political tool for politicians (Cook, 2006). Hirschfield and Simon (2010) found that many newspapers use their position as a means of legitimizing and normalizing police violence. Although the police and other government officials like to complain about the bias of news stories, "the news usually quite faithfully reflects the views, concerns, and activities of [the governing authority]" (Lawrence, 2000, p. 5). This close relationship between the media and government agents (e.g., the police) goes further than just constructing "news," it

also helps in the creation of the *Other*. News stories about crime simultaneously report on the criminal activity within a specific area and help construct the social image of the *criminal* (Lyon, 2009) which oftentimes resembles those individuals from marginalized populations, specifically younger males who are persons of color (Alexander, 2000). As a consequence, “[w]hiteness mitigates crime, whereas blackness defines the criminal” (Alexander, 2012, p. 199). Although external mechanisms regulating the use of force by officers (e.g., criminal law, civil law, and fear of a scandal) exist, the exceptions (e.g., qualified immunity and good faith) built into these external mechanisms are sufficient to provide officers with a virtual “blank check” regarding when to use force and to what degree. However, the “excessive use of force requires justification that goes beyond police legitimacy, and one of such justifications might be ideological in nature” (Gerber & Jackson, 2017, p. 91).

One justification championed by the police and their supporters is the rotten apple approach (Weitzer & Tuch, 2004). This justification accounts for the fact that the police profession attracts certain types of individuals and from this pool a subsample will be drawn to proceed to recruit training (Binder & Scharf, 1980). The “rotten apple,” then, is nothing more than an anomaly that slipped through the proverbial cracks of the department’s safety measures and places the responsibility for any police violence at the feet of the individual officer (Lawrence, 2000). Others argue that the police profession is more akin to a “rotten barrel” (Lersch & Mieczkowski, 2005). According to the *rotten barrel*

approach, a police subculture begins to develop with distinctive “set of values, norms, and lifestyles” (Lersch & Mieczkowski, 2005, p. 560) that views violence as a positive identifying attribute of both the police profession the individual officer. Regardless, the policing personality seems to exude features of “authoritarianism—among them are cynicism, bigotry, conservatism, group loyalty, and secretiveness” (Binder & Scharf, 1980, p. 113).

Another justification for the contested level of force is the characteristics of the recipient. The typical target for physical force by the police is not “an old lady, teenager at an exclusive boarding school, a minister of an Episcopalian church, or a ballerina.’...instead...‘It is most likely to be a black or Hispanic male, between the ages of 16 and 30” (Binder & Scharf, 1980, p. 114). In these instances, the targeted citizen is portrayed by their possible or real criminal history which supposedly highlights their dangerousness to the officer’s safety and by extension the safety of the public. The legitimacy of this justification is based on the perceived role of the police as crime fighters (Micucci & Gomme, 2005). In this role, the primary responsibility of the police is the detection and apprehension of *the felon* (Westley, 1953). The consequence of this perception is that a certain degree of force may be more acceptable for the *felon* than for the minister. In a recent study, it was found that approximately two-thirds of officers (62%) reported viewing their role as both a protector and enforcer (Morin, Parker, Stepler, & Mercer, 2017). The significance of this finding is that this view of police as crimefighter has not changed in 64 years.

Violence and the Police-Citizen Encounter

What these various examinations of police violence fail to account for is that violence is not an abnormal event within the police-citizen encounter; it is in actuality the foundation upon which the encounter is built. "Academy instructors often tell their students, 'The training is not because *you might be involved in a violent confrontation*; the training is to prepare you for the violent confrontation that *you will be involved in*'" (Bohrer, 2005, p. 8; emphasis added). How the officer approaches the scene even helps to introduce violence even before the encounter occurs. Officers approach the police-citizen encounter based on the information from dispatch, other officers, and their own observations (Binder & Scharf, 1980). Garner and colleagues (2002) found that officers use more force when "responding to a priority call, more force is used. Similarly, when an officer uses the lights and sirens on the patrol car" (p. 736). Once on scene, the officer has to "determine the extent of danger, if any, establish his authority, clarify his expectations for the citizen, and gather information to supplement his general knowledge" (Binder & Scharf, 1980, p. 117). This supplemental information takes many forms such as gender, suspect familiarity, criminal history, and a pinch of paranoia. Garner and associates (2002) found that the police used more force against suspects who were male; suspects who are known to carry a weapon; when the suspect is a stranger; when the presence of bystanders increases with force becoming more severe when the bystanders are strangers to the suspect; and when suspects are antagonistic. Compared to suspects who behave civil,

the odds of police using force against a suspect who is antagonistic increases by 163 percent; the odds increase 1800 percent when the suspect uses physical force against an officer (Garner, Maxwell, Heraux, 2002). “A somewhat surprising finding was that the police use less, not more, physical force if the suspect is a member of or associated with a gang” (Garner, Maxwell, & Heraux, 2002, p. 738). Regarding paranoia, officers are always leery of a citizen’s intentions; how a person walks, talks, or even dresses could rouse suspicion regarding any ill will toward the officer (Binder & Scharf, 1980). The way paranoia introduces violence into the police-citizen encounter is evidenced by how officers, and even potential future officers (i.e., “explorers”), are instructed to perform traffic stops.

The Texas Explorer’s Guide to Law Enforcement Training¹ (n.d.) instructs students that when removing a motorist from a vehicle to “1) Always be in a position to respond to an aggressive act [and] 2) Walk tactfully; never turn your back on a violator” (p. 4). The San Antonio Police Department’s General Manual (2015) on low-risk traffic stops instructs officers to “6. Exit the vehicle in a safe manner while maintaining visual contact with the violator; and 7. Approach the violator’s vehicle on the driver’s or passenger’s side. Do not go beyond the trailing edge of the driver’s or passenger’s door” (p. 3). Even pro-police websites reinforce this belief that danger is always lurking in every traffic stop. One such

¹ The Law Enforcement Explorers Program is a program designed to give “young adults a personal awareness of the criminal justice system through training, practical experiences, competition and other activities” (Exploring, 2019). The explorers program is open to individuals with at least a 6th grade education and no more than 20-years-old.

website advises officers “[monitor] the suspect for signs that they might be planning to flee or launch an attack” (Wood, 2016). On another website readers—presumably police officers—are instructed to maintain visual contact with the motorist, especially the motorist’s hands since it is “the hands that kill us [police], friends. Never forget it” (Hoschouer, 2014); after all, “[e]very traffic stop...is a confrontation” (*United States v Holt*, 1999, p. 1223). This deferment to automatic suspicion of non-police is embedded within the law itself. In *United States v Holt* (1999), the Tenth Circuit declared that “An officer in today’s reality has an objective, reasonable basis to fear for his or her life every time a motorist is stopped” (p. 1223). Going back even further, the Supreme Court of the United States (SCOTUS) stated in *Michigan v Long* (1983) that “investigative detentions involving suspect vehicles are especially fraught with danger to police officers” (p. 1047).

Binder and Scharf (1980) suggest that a possible avenue for reducing the likelihood of an officer involved shooting is educating citizens to alter their behavior when interacting with the police. This transference of responsibility from the officer to the citizenry underlies many public service announcements provided by law enforcement. The “Travel Tips” provided on the Texas Department of Public Safety’s website provides 10 tips for motorists in the event they are stopped by law enforcement. According to tip numbers 6 and 7:

“6. Wait for the law enforcement officer to give you instructions. An officer may approach from either side of the vehicle. 7. Before reaching into your glove box or under your seat to retrieve your proof of insurance or driver’s

license, inform the officer of where the items are located and follow the officer's directions" (Texas Department of Public Safety, 2018).

Tip number 9 advises motorists to tell their "passengers to remain in the car unless other instructions are given by the law enforcement officer" (Texas Department of Public Safety, 2018). Likewise, Suffolk County, New York advises motorists not to reach for documents until requested as well; however, the following tip for traffic stop that occur at night— "If the stop occurs during darkness, put on your dome or interior lights so the officer can easily see that all is in order with *no hidden threats*" (Suffolk County, n.d.; emphasis added). This acceptance and promotion of violence, as well as the sacredness of officer safety, is even embedded within the police motto *nemo me impune lacessit*. Roughly translated, the motto means "no one attacks me with impunity" (Merriam-Webster, 2016). Others have interpreted to mean "no one injures me with impunity" (Hurt, 2005) or "no one harms me and gets away with it" (Texas Gang Investigators Association, 2016). The phrase, usually used after the death of a police officer, is a subtle way of reminding fellow officers that violence and the possibility of death is always present and it acts as a warning to the public that the police hold the reins of violence and any actual or perceived threat to officer safety will not be tolerated. A final way that violence underscores all police-citizen encounters is through the militarization of police.

Police departments have continually incorporated many aspects of the military into their daily operations. Approximately 59 percent of civilian law enforcement agencies surveyed had a police paramilitary unit (PPU) in 1982.

This figure rose to 78 percent by 1990, and then to 89 percent by 1995 (Kraska & Kappeler, 1997). “By 2014, over 8000 local law enforcement agencies participated in the reutilization programs that have transferred \$5.1 billion in military hardware from the US Department of Defense to local American police agencies” (Hughey, 2015, p. 861). Furthermore, between 1980 and 1983, there were only 13 calls for service that necessitated the deployment of PPUs; however, this figure doubled by 1986, and then quadrupled by 1995 (Kraska & Kappeler, 1997). The bread and butter of a PPU’s call, however, are to effectuate warrants, primarily no-knock warrants with the majority of no-knock warrants being carried out by PPUs is for drug related offenses, and usually involves the PPU using a dynamic entry to effectuate the warrant (Kraska, 2007). However, this increased use of military-style tactics to perform routine police function, as well as the continued exposure of police wearing military-style attire, opens the possibility that individuals who are not the target of the police become victimized by these military tactics.

According to a law enforcement respondent in Kraska and Kappeler’s (1997) study, who was a part of a PPU dynamic entry, “We did a crack-raid and ...shots were fired...When we went into the next apartment where the bullets were penetrating, we found a baby crib full of holes; thank god those people weren’t home” (p. 9). In 2014, police were executing a “no knock” warrant at the home of a suspected meth dealer when the police deployed a flash-bang grenade inside the home (Stelloh, 2015). The suspected meth dealer was not at

the location during the raid, and the grenade landed in an infant's crib causing severe injuries to the infant (Stelloh, 2015). In 2019, "SWAT officers wearing 'army fatigues with black cloth covering their faces and wearing goggles' burst through the home's doors armed with automatic rifles, throwing flash-bang grenades as they stormed inside" (Chiu, 2019). The raid ended with a 12-year-old, sitting on the edge of his brother's bed and complying with every order, having his kneecap shattered by the bullet from an officer's gun (Chiu, 2019). Militarizing the police in this manner not only endangers the local population, but the officers as well. In 2012, a "narcotics strike force" comprised of 12 officers broke into the home of a Utah man on a tip that he was selling marijuana (Balko, 2013). The Utah man, who was a military veteran, awoke to the sound of the police trying to break in, and believing it was criminals, opened fire with a 9-millimeter pistol (Balko, 2013). This incident resulted in the firing of 31 shots by the Utah man, 250 shots by the narcotics strike force, the confiscation of 16 small marijuana plants, and the death of one officer (Balko, 2013). By normalizing these tactics, law enforcement is able to establish this form of policing as a traditional method of the police culture.

The creation of normalcy is an important aspect of the militarization of police. In one department, the local police not only patrol neighborhoods in full-tactical gear while riding inside an armored personnel carrier, but they will even use their "specialized training" to stop individuals who appear suspicious (Kraska & Kappeler, 1997). Citizen police academies provide members of the community

the opportunity to walk the thin blue line and interact with a society's more *dangerous* populations. According to the National Police Association (2019), "The purpose of a Citizens Academy is to familiarize citizens with the operations of the police department." Citizens are afforded the opportunity to take "classes on patrol procedures, criminal law, narcotics, search and seizure, tactical operations, investigations, juvenile law, firearms demonstration, emergency vehicle operations, use of force issues, and police canine demonstrations." Furthermore, those citizens selected for the citizen's police academy may have an opportunity to accompany a police officer on a ride along and "witness the street-activity officers encounter on a day-to-day basis." However, the goal of these programs is stated in big, bold type: "Be the eyes and ears of your community with Law Enforcement Citizens Academies" (National Police Association, 2019). As one can see, the populace itself is turned into a living panopticon.

These findings should come as a warning for those who champion the current use of a military-style policing. As the Orwell Foundation (2021) pointed out in his essay "Notes on Nationalism," nationalism is "the habit of identifying oneself with a single nation or other unit, placing it beyond good and evil and recognizing no other duty than that of advancing its interests." Patriotism, on the other hand, is a "devotion to a particular place and a particular way of life, which one believes to be the best in the world but has no wish to force on other people" (The Orwell Foundation, 2021). The characteristic that differentiates patriotism

from nationalism is how force is used. Unlike patriotism which is defensive in its use of force, “[t]he abiding purpose of every nationalist is to secure more power and more prestige, *not* for himself but for the nation or other unit in which he has chosen to sink his own individuality” (The Orwell Foundation, 2021; emphasis in original). Conflating patriotism with nationalism creates an ecosystem in which an officer is not only seen as “protecting and serving” the community when they use violence to coerce compliance, but the individual’s acquiescence to the state’s will (i.e., compliance to a state agent) is perceived as doing their civic duty to maintaining the *natural order* of society. That is, the individual is being “patriotic” even though their compliance occurs under the threat of violence that may be inflicted upon them if their actions are deemed as jeopardizing officer safety. Therefore, there is a greater potential that a “routine” police-citizen encounter will end in the use of excessive force, or at worst, the death of a citizen.

CHAPTER FOUR

BROWN V BATTLE CREEK POLICE DEPARTMENT AND THE LEGAL JUSTIFICATIONS OF CANICIDE

On December 19, 2016, the United States Sixth Circuit Court of Appeals filed their decision in the case of *Brown v Battle Creek Police Department*, 844 F.3d 556 (2016). The decision ignited a firestorm of controversy in the court of public opinion because the ruling was largely interpreted as granting the police a blanket authority to shoot a person's dog for moving or barking (Bergman, 2017). For instance, one such article begins with the sentence "A police officer can shoot a dog if it barks or moves when the officer enters a home, under a new federal court ruling issued this month" (WREG, 2016). In another, Kramer (2017) began her article by stating "A recent federal court ruling states that once a police officer has entered a home, he or she may shoot a dog if it barks or moves. On the other side of the issue, a pro-police website began its discussion of *Brown* (2016) with "Recently, the U.S. Court of Appeals for the Sixth Circuit found that an individual has a property right in his or her pet, the unreasonable seizure of which is a violation of the Fourth Amendment" (FEDagent, 2017). Helping drive this firestorm was the belief for some that the Sixth Circuit's decision was novel. Yet, the implications of the *Brown* (2016) decision for pet owners and police officers has not only been oversimplified, but further continued, and hence entrenched, the judiciary's codification of police practices which stem back years. In other words, I want to suggest that the *Brown v Battle Creek Police*

Department decision didn't so much as produce some new legal commonsense about canicide as much as it legitimated an already existent legal history of courts upholding the police right to shoot and kill dogs.

The goal of the current chapter, then, is to provide the reader with an in-depth analysis of the *Brown* (2016) decision. Of particular interest are the legal categories or logics such as officer safety and imminent danger that the court used to justify the canicide at issue in the *Brown* case. This brings to light an issue that shouldn't be normalized or overlooked too quickly, even as it might seem like a "commonsense" point: the legal justification of canicide is premised on or depends on the very same legal categories the law turns too in the justification of police violence against human subjects. In other words, both police violence against human "threats" and non-human "threats" like dogs is justified in quite similar terms due to what Mark Neocleous (2000) has called the "the permissive structure of the law" that grants police what is essentially an unlimited discretionary power over life and death.

Overview

In *Brown* (2016), a search warrant was issued for the residence of a Mrs. Brown, who was living with her daughter Ms. Nesbitt (homeowner) and a Mr. Brown (relationship to either Mrs. Brown or her daughter is unknown). The target of the search was not the Browns, but a Vincent Jones who was the father of Ms. Nesbitt's daughter. Mr. Jones had a criminal history and was known for having gang affiliations, as well as being well-known among the officers of the Battle

Creek Police Department (*Brown v Battle Creek Police Dept.*, 2016). The police searched the trash of the household and retrieved “baggies with residue of marijuana and cocaine, a small amount of loose marijuana, and mail addressed to [the homeowner] and Vincent Jones” (*Brown v Battle Creek Police Dept.*, 2016, p. 561). After the trash pull, officers began planning a raid on the Brown residence. During the operation’s planning stage, the police discussed Jones’ criminal history, gang affiliations, the possibility of children and-or dogs being present when the warrant is carried out, and other details of the upcoming search. The city’s Emergency Response Team (ERT) was included in the search due to Jones’ criminal history, his associations, and his potential for violence (*Brown v Battle Creek Police Dept.*, 2016).

On the day of the raid, officers were en route to the Brown residence when they received information that Jones had been detained by authorities after leaving the residence and that a dog was in the backyard. Officer Case testified that the decision to continue with the raid was made because “whether [Vincent Jones] got stopped or not, the risk [that others were in the residence] would still be high” (*Brown v Battle Creek Police Dept.*, 2016, pp. 560-561). Mr. Brown was walking to his car when the officers arrived to execute the search warrant. Officers detained Mr. Brown and informed him that they had a warrant to search the residence. Although Mr. Brown offered the officers the use of his house key, the raid team chose to use a battering ram to gain entry. While making their way to the front door, the raid team noticed two dogs in the front window. According to

Officer Klein who was leading the raid, the dogs were “‘digging and pawing’ and ‘jumping’ at the window” (*Brown v Battle Creek Police Dept.*, 2016, p. 562). After breaching the front door, the dogs who were at the window went to where the officers had entered the residence. It was at this moment that a police officer shot one of the dogs with a nonfatal shot. During this violent encounter, the second dog made its way to the basement via the kitchen.

The dog that was shot upon the officers’ arrival was able to escape the entry team and make its way to the basement (*Brown v Battle Creek Police Dept.*, 2016). Officers followed the first dog’s path toward the basement where officers claim that the injured dog “turned towards them and started barking again” (p. 563) when they were midway down the stairs (*Brown v Battle Creek Police Dept.*, 2016). Another officer with the entry team fired two more shots at the first dog which proved fatal. The second dog—which ran to the basement during the breach of the front door—was not showing any signs of aggression other than barking at the officers. Yet, the officer who shot the first dog still chose to shoot the second dog because the officers believed there could be gang members in the basement and the second dog was preventing them from “safely” sweeping the area, thus, the second dog was believed to be a threat to officer safety. The officer’s first shot was nonfatal, as was the second shot from a different officer; the fatal shot came from a third officer who fired on the dog to “put her out of her misery” (*Brown v Battle Creek Police Dept.*, 2016, p. 563). The

Sixth Circuit concluded that the officers' actions were reasonable based on the following:

Jones' criminal history, gang affiliations, the types of drugs he was suspected of distributing, the fact that the officers had no time to plan for the dogs, in addition to the officers' un rebutted testimony that the dogs either lunged or were barking aggressively at the officers, the nature and size of the dogs, the fact that the dogs were unleashed and loose in a small residence, all culminate into a finding that the officers acted reasonably when they shot and killed the two dogs (*Brown v Battle Creek Police Dept.*, 2016, p. 572).

This perspective by the Sixth Circuit highlights important characteristics about police violence against dogs and police violence in general. First it highlights that an officer's safety takes precedence over a citizen's constitutional rights. Second, the Sixth Circuit's ruling reinforces a long held judicial stance that officers are oftentimes placed in situations where they need to make a split-second decision regarding the use of force. Third, the judiciary restricts who has the authority to establish the "facts" of an officer involved shooting. Fourth, the Sixth Circuit's decision highlights how perceived non-submission to the government's policing powers is deemed dangerous and worthy of a violent response. Perhaps even most telling, is how both Jones and his pit bulls were linked through the category of "threat" or "dangerousness" – Jones' criminal history and alleged gang history is mapped onto the perceived violent threat of the pit bull as justification for Officer Klein shooting, then pursuing, then killing the "dangerous dogs." The role of the dangerous dog concept will be discussed in a later chapter.

Officer Safety

The category of *officer safety* is perhaps the most foundational legal justifications for police violence. Chappell & Lanze-Kaduce (2010) examined a new curriculum of study at a police academy which focused on community policing and problem solving. Results indicate that officer safety was a fundamental concept which was reinforced in practically every way imaginable (Chappell & Lanze-Kaduce, 2010). The official academy textbook included scenarios for the recruits to work through. Instructors would divide the recruit class into groups and have them work on the scenarios, after which each group gave a presentation about their method for resolving the situation. “The instructor’s first question was always, ‘How would you deal with officer *safety* in this scenario?’” (Chappell & Lanze-Kaduce, 2010, p. 200; emphasis in original). Officer safety is even the paramount concern of the judiciary when determining the reasonableness of an officer’s actions. The judiciary’s usual strategy for protecting officer safety is to expand when officers are permitted to use force against suspects (Ristroph, 2017). Officer safety was sown into Fourth Amendment jurisprudence when the United States Supreme Court delivered its decision in *Terry v Ohio* (1968). According to the Court in *Terry v Ohio* (1968), an officer is permitted to search someone’s outer clothing for weapons as a means of ensuring the officer’s safety: “[an] officer need not be absolutely certain that the individual is armed” (p. 27) prior to searching the individual; all the officer has to do is believe his safety or that of others is in danger (*Terry v Ohio*, 1968). The

following year the U.S. Supreme Court relied on officer safety as the foundation for allowing officers to conduct a warrantless search of the area within the arrestee's immediate reach in its *Chimel v California* (1969) decision: "A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested" (p. 763). Officer safety was an exception explicitly stated in the U.S. Supreme Court's striking of a Tennessee statute allowing officers to use deadly force against fleeing suspects as unconstitutional. The U.S. Supreme Court declared that the use of deadly force to stop the escape of an unarmed felon was unconstitutional except when "it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others" (*Tennessee v Garner*, 1985, p. 3). The fruits from the seeds sowed by the U.S. Supreme Court in *Terry* (1968) were reaped 21 years later when the Court decided the case of *Graham v Connor* (1989).

The *Graham* court declared that lower courts must consider an officer's safety along with other factors of the police-citizen encounter (e.g., suspect resistance) when deciding on the reasonableness of an officer's use of force. Even though some argue that it is wrong to equate force with violence (Kania & Mackey, 1977), the fact that there does not exist a clear consensus on which behaviors constitute an act of police violence (Lersch & Mieczkowski, 2005) should give pause when addressing the role of officer safety in police shootings.

The U.S. Court of Appeals for the Second Circuit established that “Not every push and shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates a prisoner’s constitutional rights” (*Johnson v Glick*, 1973, p. 1033). The U.S. Supreme Court in *Graham* (1989) expanded on the reasoning in *Johnson* (1973) by removing “violates a prisoner’s constitutional rights” and substituting “violates the *Fourth Amendment*” (*Graham v Connor*, 1989, p. 396; emphasis in original). This alteration to *Johnson’s* (1973) original language broadens the type of force an officer may legally use to coerce compliance while simultaneously narrowing those actions that could be deemed “police violence.” The sacredness of officer safety raises an important question, what does safety look like? At every stage of the police-citizen interaction, violence underscores the entire encounter which places both the officer and the individual in a precarious dance. This concern over officer safety also extends into encounters between the police and dogs.

Responding to the question regarding which behaviors the dogs were displaying that led Officer Klein to fear for his safety and the safety of his fellow officers, Officer Klein responded:

[it was the] [d]eep aggressive barking, consistent barking, not just one or two barks, but steady, aggressive. Lunging towards the windows as we made our approach. The dog moving from the couch directly to the front door after it was breached. The fact that the same dog even after it was shot stood at the bottom of the stairs and turned towards me, continuing to bark aggressively in the same manner, and then the second dog, even after that happened, after firing three rounds at the first dog, the second dog turning, pausing as it was moving across the basement, it stopped and turned and was barking (*Brown v Battle Creek Police Dept.*, 2016, p. 569).

Officer Klein's testimony describes a situation that was intense, chaotic, and filled with uncertainties. The Sixth Circuit's dismissal as to whether the dogs were barking or not is strange since the very first behavior that Officer Klein highlighted as indicative of canine aggression and threatening behavior was the dogs' barking. Not only did Officer Klein allude to the dogs' barking, but it distinguished their type of barking from "normal," non-aggressive barking: "*Deep aggressive barking, consistent barking, not just one or two barks, but steady, aggressive*" (*Brown v Battle Creek Police Dept.*, 2016, p. 569; emphasis added). The dogs' barking even took precedence over their "lunging" at the officers when they first approached the residence in Officer Klein's sworn testimony.

Making the Sixth Circuit's dismissal of the discrepancies regarding the dogs' barking even stranger is the fact that the Sixth Circuit stated in another paragraph that "A jury could reasonably conclude that a 97-pound pit bull, *barking* and lunging at the officers as they breached the entryway, posed a threat to the officers' safety and it was necessary to shoot the dog..." (*Brown v Battle Creek Police Dept.*, 2016, p. 570; emphasis added). Here, again, the act of barking precedes the physical act that would place the dogs within biting distance of the officers (i.e., lunging). Recall that the positioning of words in a sentence is indicative of the words or phrases that are important in driving the story (Machin & Mayr, 2013). Highlighting the dogs' barking before highlighting their lunging indicates that it is not the physical act itself which is threatening, but rather the perceived non-submission to the officers' authority. The dismissal of the dispute

over the timing between the officer's breaching the door and the first shots, then, becomes problematic when the law is manipulated so that the judiciary can codify the killing of dogs by officers. Furthermore, the Sixth Circuit's *Brown* (2016) decision is not unique in its reliance on the dogs' barking as indicative of an imminent threat. It has been settled that the judiciary may take into consideration when determining the reasonableness of an officer's actions "the demeanor of the dog at the time of the incident, such as whether it appeared aggressive by barking and snarling" (*Newman v City of Fresno*, 2018, p. 10)".

In *Carroll* (2013), a deputy feared for his safety when confronted with a dog that was "*growling, barking, and quickly and aggressively approaching him*" (p. 650; emphasis added). The United States District Court for the Southern District of Florida found that a Broward County deputy's shooting of a dog was reasonable due to the deputy—responding to a call about a barking dog—was "confronted by an aggressive dog with a territorial bark" (*Esterson v Broward County Sheriff's Department*, 2010, p. 12). In *Azevedo v City of Fresno* (2011), an officer shot at and missed a dog who "immediately began to growl and bark, and aggressively advanced on [the officer]" (p. 4) after the officer had announced his presence; a U.S. District Court in *Billingsley v Hunter* (2015) found that "the uncontradicted facts show...that once the dog, barking loudly and jumping up on the screen door, escaped the house, the dog approached [the officer] in an aggressive manner...and received gunshot wounds to the front of his body" (pp. 12-13). An officer's shooting of a dog was deemed reasonable because "several

large dogs ran out aggressively charging, barking and growling” at him and another officer (*Romero v Bexar County*, 2014, p. 661). Finally, an officer’s ride-along heard a suspect’s dog barking while it advanced on him and the officer. This witness account was helped support the United States District Court for the Eastern District of Michigan decision to find the officer’s shooting of the dog as reasonable even though the officer himself did not hear the barking (*Bateman v Driggett*, 2012). A dog’s bark, then, has always been considered just as bad as, if not worse than, its bite.

Solidifying the sacredness of officer safety within the fabric of legal doctrine also occurs in those decisions in which an officer’s use of force was deemed unreasonable. In *Villo v City of Milwaukee* (2008), police were looking for a suspect who was known to be armed and who was accompanied by a pit bull. During the search of the house where the suspect was last seen, the legal resident’s dog—a Labrador and Springer spaniel mix—was shot 4 times by police; the fourth shot proved fatal and was done to end the dog’s suffering from the previous 3 shots. Analyzing the officer’s actions, the *Villo* (2008) court ruled that the first two shots were reasonable responses by an officer who was “faced with a loose, *charging, growling* dog, who had just jumped a fence, at a location where a pit bull was anticipated” (p. 839). Regarding the third and fourth shots, the *Villo* (2008) court ruled that “there is a genuine issue as to whether [the dog] posed no imminent danger at the time the third and fourth shots were fired” (p. 842). Furthermore, the court could not determine if there was enough evidence to

suggest that the dog needed to be euthanized (*Villo v City of Milwaukee*, 2008, p. 842). In other words, the officers were justified in shooting the dog the first time, but the reasonableness of their actions became questionable after the second shot onward because the officers could not demonstrate that the dog still posed a threat to their safety.

In *Kincheloe v Caudle* (2009), a police chief was driving his patrol car when he spotted a dog walking down the street. The police chief yelled at the dog through his open window at the dog. The dog continued walking until it reached the property of its owners where it “walked up to the porch and began to bark at [the police chief]” (*Kincheloe v Caudle*, 2009, p. 3). At this point, the police chief parked his “patrol car in the middle of the street” (p. 3) and walked onto the dog’s owners’ property. When the granddaughter of the dog’s owner noticed the patrol car outside the house, she walked out to find the family dog in the front yard. Verbal attempts to get the dog back to the house proved unsuccessful and the dog “proceeded to walk toward some bushes on the front lawn of the house” (p. 3). The police chief pulled his weapon and fired two shots, killing the dog. Although the police chief claimed the “dog *charged* [him] in an *aggressive* manner and that he was therefore *forced* to fire two shots at the for his ‘own *protection*’” (p. 23; emphasis added), the court found that the dog’s owners provided sufficient evidence to call into question the reasonableness of the police chief’s actions. The tipping point for the court in this decision appears to have been (1) the fact that dog was on its owner’s property and the police

chief knew that the owners of the dog resided at that location and (2) there were no exigent circumstances present (e.g., the escape of a suspect, the destruction of evidence, or an active threat to officer safety or public safety). A similar decision to that in *Kincheloe* (2009) was reached in *Taylor v City of Chicago* (2010).

The issue at question in *Taylor* (2010) regarded the shooting of a family dog as a result of a 9-1-1 call concerning a dog wandering loose in the neighborhood. According to the facts of the case, the dog's owner was hosting a gathering at her residence when the dog wandered off the property due to a gate being left open by accident. At about the same time as the dog's owner was being informed that her dog was wandering loose, an officer with the local police department arrived in the neighborhood in answer to a 9-1-1 call about a loose dog. "[The officer] immediately drew is gun even though [the dog] was not *biting*, *attacking*, or *threatening* anyone and instead just standing still and wagging his tail" (p. 2; emphasis added). The *Taylor* (2010) court concluded that "[a]t the time [the officer] prepared to shoot [the dog], [it] had not strayed far from home and was standing still and wagging his tail. A seven-year-old girl was close to [the dog], looking to retrieve him for [the owners]" (*Taylor v City of Chicago*, 2010, p. 8). Finally, the court in *Mayfield v Bethards* (2016) reasoned that it would have been clearly established that shooting and killing a family's dog—which was not acting aggressive and on its owner's property—by a deputy would violate the reasonableness standard of the Fourth Amendment regarding warrantless

seizures. Likewise, the court in *Bullman v City of Detroit* (2018) declared that “a jury could reasonably conclude that—given that the dogs were separated from the officers and never lunged at or attacked the officers—the dogs did not pose an imminent threat to officer safety.

Overcoming the sacredness of officer safety appears to rest on providing evidence that taps into a society’s cultural scripts of *safety*. There exists a culturally held narrative which associates extreme youthfulness and femininity with weakness and passivity (Roth & Basow, 2004; see also, Hemelrijk, 2006). “Femininity discipline begins working upon females during childhood (perhaps even infancy) by transmitting to children a mental connection between femaleness and weakness and by forcing girls to embody that weakness in their bodies” (Roth & Basow, 2004, p. 249). In *Taylor* (2010), part of the judiciary’s finding regarding the safety of the dog was the presence of a seven-year-old girl waiting to take control of the *dangerous* dog. The *Taylor* (2010) court’s inclusion of the young girl reinforces the cultural narratives that femininity is non-threatening. Therefore, a dog is evidently not “dangerous” nor “threatening” to a grown adult police officer if a seven-year-old girl can control the dog. Another cultural script that modern society associates with safety is class. Animals have always been a conduit for representing the social position of their owners: “thoroughbred horses represented aristocrats, prize cattle represented wealthy landowners, foxhounds and gun dogs represented the rural gentry” (Ritvo, 1986, p. 243), and the dog is no different.

Bulldogs were the physical embodiment of the “lower- or dangerous-class” since it was mainly used in bullbaiting (Ritvo, 1986). However, through the manipulation of the dog's physical traits and its social history, the bulldog became the “darling of the refined and fashionable” (p. 245) by 1880 (Ritvo, 1986). Not only did bulldogs become the darlings of the social elites, but their owners were now perceived as respectable (Ritvo, 1986). Linking class and gender, this new “kindliness of disposition” was believed to be supported by the large number of women attending an all bulldog show in 1893 (Ritvo, 1986). This same connection between an owner's class and the dangerousness of dogs influences modern judicial decisions. In *Brown* (2016), the Sixth Circuit began their justification of the shooting by focusing on “Jones' criminal history, gang affiliations, the types of drugs he was suspected of distributing” (p. 572). The dogs' “threatening” behaviors of barking and lunging are listed after Jones' criminal history and gang associations, the lack of time the officers had to prepare for the dogs' presence, and even the Sixth Circuit's decision to recognize any genuine issue of material fact regarding any discrepancy between the testimonies of officers and that of the Browns.

The importance of the relationship between unsavory people and the pit bull breed in justifying the killing of the Browns' dogs manifests itself in the Sixth Circuit's conclusion regarding the shooting of the first dog. Aside from the first dog's weight and breed, it was also reasonable to shoot the dog according to the Sixth Circuit to “insure that there were no other gang members in the residence

and that evidence was not being destroyed” (*Brown v Battle Creek Police Dept.*, 2016, p. 570). Again, the pit bull “breed” is considered unsavory because the breed is sought after by unsavory members of society. In contemporary society, the pit bull breed is symbolic of the “urban” (Dickey, 2016) making the pit bull *persona non grata* and the embodiment of America’s fear of dangerous classes (Dickey, 2016). Without these cultural scripts, it is difficult to counter an officer’s narrative that they feared for their life or that of others. As noted in the introduction, violence underlies every police encounter. However, a crucial aspect of determining if officer safety was jeopardized relies on the officer establishing that an imminent danger threatened their life or those of other officers.

Imminent Danger

The eleventh edition of Merriam-Webster’s Collegiate Dictionary (2003) defines *imminent* as “ready to take place” (p. 621) and *danger* as “exposure or liability to injury, pain, harm, or loss” (p. 315). Black’s Law Dictionary (2004) defines imminent danger as “1. An immediate, real threat to one’s safety that justifies the use of force in self-defense. 2. Criminal law. The danger resulting from an immediate threatened injury sufficient to cause a reasonable and prudent person to defend himself or herself” (p. 1184). This view of imminent danger plays into the United States Supreme Court’s decision in *Graham v Connor* (1989) which directs judges to take into consideration the fact that “police officers are often forced to make split-second judgments— in circumstances that are

tense, uncertain, and rapidly evolving— about the amount of force that is necessary in a particular situation” (p. 397). Specifically, the Graham (1989) decision focuses on the lack of time an officer has to recognize a threat and make a decision. The time between a suspect’s action and the officer’s recognition, decision, and reaction, specifically the shortness thereof (i.e., immediacy), is a fundamental element in the reasonableness of an officer’s use of force.

Upon seeing [the deputy], Fred [the dog] *immediately charged* at her. At that moment, she felt her life was threatened and even after shooting at Fred once, Fred *charged* her again, *forcing* [the deputy] to shoot [Fred] once more (*Esterson v Broward County Sherriff’s Department*, 2010, p. 12; emphasis added).

Thus, there is no material dispute as to whether [the dog] presented an *imminent threat* to [the officer], who was not unreasonable in shooting it (*Smith v City of Detroit*, 2017, p. 27; emphasis added).

The Court, therefore, concludes [defendant’s] decision on whether and what type of force to use as well within the realm of reasonableness. When confronted with an *aggressive* dog that made him fearful for his safety, [defendant] chose to shoot [the dog] (*Pettit v New Jersey*, 2011, p. 23; emphasis added).

Also, unlike scenarios in which a dog might not pose a genuine threat to officer safety...there is sufficient evidence here for the jury to find that [the deputy] reasonably feared for his safety when the plaintiff’s dog *aggressively* approached him in the entryway (*Carroll v County of Monroe*, 2013, p. 652; emphasis added).

In *Perez v City of Placerville* (2008), the Placerville Police Department received notice of a warrant issued for an individual residing in their jurisdiction. Officers (3 officers and a K-9 unit) went to the location where they believed the individual listed on the warrant was living. The K-9 unit and another officer went to the back

of the residence to secure that area. During their trek to the backyard, the K-9 officer made noise to elicit a response from any possible dog that might be in the backyard. The officer did not receive a response, nor did he see a dog when he peeked over the fence; yet, “[t]he head of a Rottweiler immediately pushed through the gate and attacked [the officer] and canine Rico” (p. 7) when the officer slightly opened the gate (*Perez v City of Placerville*, 2008). The officer shot the Rottweiler three times after pepper spray proved futile. The Rottweiler succumbed to its injuries even after being transported to an emergency veterinarian hospital by officers. The U.S. District Court in this case reasoned that the officer’s use of force was reasonable since his actions were “in defense of his fellow officer and police canine” (*Perez v City of Placerville*, 2008, p. 28).

Likewise, the United States District Court for the District of Oregon, Portland Division reasoned that the shooting of a dog was reasonable because the officer “reasonably believed he was in imminent danger of physical injury from [the dog] at the time he fired his weapon...” (*Birkes v Tillamook County*, 2011, p. 22); in another incident, the officer’s use of force was deemed reasonable because “out of fear for his personal safety, discharged his firearm because he believed he was in imminent danger of being attacked or bitten by [the dog]” (*Pettit v New Jersey*, 2011, p. 20); finally, the United States District Court for the Eastern District of Michigan, Southern Division that an officer’s use of deadly force against a dog was reasonable because “the dog posed an imminent threat to [the officer’s] safety” (*Hayes v City of Detroit*, 2017, p. 5).

These narratives, along with the wording used in the various state statutes, reinforce the narrative set forth in *Graham* (1989) that an officer's use of force typically occurs in encounters which are "tense, uncertain, and rapidly evolving (p. 397).

In *Brown v Muhlenberg Township* (2001) an officer's shooting of a Rottweiler who was "stationary and not growling or barking" (p. 209), and who's owner was nearby and wanting to retain custody of the dog, was deemed unreasonable. As the Third Circuit made clear in *Brown* (2001), a "state's interest in protecting life and property may be implicated when there is reason to believe the pet poses an imminent danger' ... 'This does not mean, however, that the state may, consistent with the *Fourth Amendment*, destroy a pet when it poses no immediate danger and the owner is looking on, obviously desirous of retaining custody" (*Brown v Muhlenberg Twp*, 2001, pp. 210-211). In *Robinson v Pezzat* (2016), the U.S. Court of Appeals for the D.C. Circuit reversed a lower court's granting of summary judgment for Officer Pezzat because they believed that "[i]f the jury believed Robinson's testimony that Wrinkles was lying down, it could reasonably conclude that the dog acted aggressively toward Pezzat only after being shot" (p. 11). In other words, a jury could conclude that there was no imminent danger from a dog lying on the floor and that any alleged aggressive behavior was the result of being shot by the police. It is important to note though that, by and large, it is the officer's own story, or the officers' narrative, that is privileged within the courtroom over and beyond other voices.

In the same case, however, the D.C. Circuit declared the other officer on scene as acting reasonably when he shot “Wrinkles.” According to the D.C. Circuit in *Robinson* (2016), “Given that Wrinkles bit Officer Pezzat hard enough to puncture her leather boots, McLeod’s belief— just seconds later—that the dog continued to pose an imminent threat even absent additional aggressive behavior was hardly unreasonable” (p. 12). Clarifying the D.C. Circuit’s decision in *Robinson* (2016), Wrinkles posed no imminent threat to Officer Pezzat prior to being shot; therefore, a jury could conclude that her actions were unreasonable. However, after biting Officer Pezzat, Wrinkles now posed a danger to the other officers on scene which was still *imminent* when Officer McLeod shot Wrinkles, thus making Officer McLeod’s shooting reasonable.

These cases and others highlight that the judiciary is reluctant to restrict the opportunities for officers to use force based on officer safety. This is the notion of the permissive structure of the law mentioned earlier (Neocleous 2000). The United States Supreme Court in *Preston v United States* (1968) declared that warrantless searches and seizures were permissible “to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime” (p. 367). This adherence to the destruction of evidence was followed by *Chimel v California* (1969). Even the dissent in *Chimel* (1969) noted that it would allow the search of a person and the area immediately surrounding the individual “to assure the

safety of the officers or to prevent the destruction of evidence” (p. 780; see also *Sibron v New York*, 1968).

Returning to the Sixth Circuit’s decision in *Brown* (2016), Officer Klein testified that “less than fifteen seconds” (p. 562) elapsed between knocking and announcing their presence and the actual breaching of the door (*Brown v Battle Creek Police Dept.*, 2016). Once inside the residence, the officers were confronted with one dog presenting an active threat to their safety and another dog that had ran to the basement (*Brown v Battle Creek Police Dept.*, 2016). Contesting Officer Klein’s narrative, Mr. Brown, in his own deposition testimony, argued that approximately 3-4 minutes elapsed between the officers breaching the door and the first gunshots, and that the second dog did not bark once (*Brown v Battle Creek Police Dept.*, 2016). The Sixth Circuit concluded that the inconsistencies between “[Mr.] Brown’s testimony about the timing of when he heard the shots and the lack of barking he heard when the officers approached the residence is not material to whether, *once inside the residence and out of Mark Brown’s viewpoint*, the dogs posed an imminent threat to officers’ safety” (*Brown v Battle Creek Police Dept.*, 2016, pp. 571-572; emphasis added). Putting this quote into perspective, the Sixth Circuit is stating that Mr. Brown who was detained outside of the residency by law enforcement is not authorized to establish legitimate facts about the events that unfolded since he was not there with the officers inside the home to view the dogs’ behavior. The Sixth Circuit’s decision in *Brown v Battle Creek Police Department* (2016), though, glossed over

the D.C. Circuit's ruling regarding Officer Pezzat and focused on its affirmation to the reasonableness of Officer McLeod's actions when justifying the police shooting of the dogs in *Brown* (2016). The focus on one officer's testimony over that of another highlights the existence of authorized narrators who the judiciary legitimizes as having the knowledge necessary to establish the facts surrounding the use of deadly force.

Authorized Narrators

The judiciary's legitimization of who has the authority to establish the facts of a shooting occurs through the concept of a "genuine issue of material fact." The term "genuine issue of material fact" refers to the existence of a dispute that requires "a jury or judge to resolve the parties' differing versions of the truth at trial" (*First Nat. Bank of Ariz. v Cities Service Co.*, 1968, p. 289). As the United States Court of Appeals for the Fourth Circuit declared in *Maciariello v Sumner* (1992), "Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines" (p. 298). Therefore, the police (i.e., the government) have a stake in which version of events the judiciary accepts as "true." As the United States Court of Appeals for the Fifth Circuit stated regarding a conflict between the police narrative and that of the owner of a shot dog, "There is no video here. Instead, we have a conflict of self-serving statements" (*Jones v Lopez*, 2017, p. 341). This analysis is not an accusation of police intentionally lying in their dispositions; rather, it highlights the conflict of interest that the

government (e.g., the judiciary) decides if it wants to accept as true the government's narrative (e.g., the police).

This conflict is usually resolved in favor of the government and justified on the basis that the non-government party failed to raise a genuine issue of material fact. The court in *Smith* (2017) accepted the police version of events stating that the "Plaintiffs concededly present no evidence rebutting the police officers' claims that the dog they shot was charging up the stairs against them" (p. 27). The judiciary will oftentimes rely on the fact that the contesting party did not actually witness the event. In *McCarthy v Kootenai County* (2009), a United States District Court stated, "Plaintiffs maintain the shooting of the dog was not reasonable. However, the Plaintiffs did not observe the dogs interacting with the officer and this statement alone cannot create a genuine issue of material fact" (p. 16). A sentence in footnote 3 of the *Esterson* (2010) decision states, "In fact, it is Plaintiffs who offer no evidence to challenge the evidence that Fred threatened [the deputy's] life" (pp. 12-13). Likewise, a United States District Court in *Powell v Johnson* (2012) declared that "Plaintiffs contend that Blu [the dog] was 'not in attack mode,' but the record is devoid of evidence to support that assertion" (p. 876). Finally, in *Villo v City of Milwaukee* (2008), a U.S. District Court, in a series of footnotes, continually dismisses Ms. Villo's counterclaims to the claims made by the officers who were involved in the shooting of her dog; "While Villo disputes this finding, she presents no discussion or citation to evidence contradicting that this is what the officers did or suggest that that there was a way for the officers to

avoid the dog” (p. 830, footnote 3). Likewise, *Jones v Lopez* (2017) stated in a footnote that “it is the Plaintiffs who offer no evidence to challenge the evidence that Fred threatened Deputy Damiano’s life” (p. 12, footnote 4).

Determining whether a nonmovant has sufficiently established a genuine issue of material fact is done via the “clear-and-convincing” standard of proof (*Anderson v Liberty Lobby, Inc*, 1986). The clear and convincing standard of proof is an intermediate level standard, and it is used when the infringement on a defendant’s liberty and rights is more than monetary but still significant enough to require a standard of proof that is just below the beyond a reasonable doubt level (*Addington v Texas*, 1979). Requiring judges to apply the intermediate standard of proof when deciding summary judgment issues is believed to ensure the legitimacy of the jury as the *true* trier of facts (*Anderson v Liberty Lobby, Inc*, 1986). Although “[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury, [and] not those of a judge” (*Anderson v Liberty Lobby, Inc*, 1986, p. 255), the Sixth Circuit in *Brown* (2016) concluded that the Plaintiffs failed to indicate any “admissible evidence that creates a genuine dispute that would allow a reasonable jury to return a verdict in their favor” (p. 568). What the Sixth Circuit has done in this instance is to put itself in the mindset of a potential jury to legitimize the officers’ version of events as undisputed even though it had recognized the existence of discrepancies between sworn testimonies. This judicial clairvoyance is not unique to *Brown* (2016). Again, the “evidence” presented by officers in these

cases is nothing more than their sworn testimony. Yet, the authority of an officer to establish the facts of a case may be suspended if those facts are exculpatory in nature.

Providing testimony from various officers of the Battle Creek Police Department, the Plaintiffs in *Brown* (2016) argued that a custom existed in the Battle Creek Police Department which encouraged the shooting of animals via a tally system. According to one officer's testimony, "it was very common that officers would talk about [how many animals they shot]' and that he could not identify individual officers who did this because 'there were so many of them just bragging about it'" (*Brown v Battle Creek Police Dept.*, 2016, p. 574). The Sixth Circuit refused to accept this as evidence of a "custom or policy" because the "The tally system Plaintiffs mention, while not an example of model police behavior, does not provide proof of a pre-existing pattern of similar constitutional violations by police officers' ... and that '[u]nsubstantiated testimony from a few officers generally describing the tally system while not providing details about the number of officers participating in it or the number of shootings tallied is neither persuasive nor meaningful" (*Brown v Battle Creek Police Dept.*, 2016, p. 575). Yet, the Sixth Circuit sided with the district court regarding the threat posed to officer safety by the dogs when declaring that taking "the facts in the light most favorable to Plaintiffs, the un rebutted fact that Officer Klein *said* the large brown pit bull lunged at him before he shot her would still establish that his actions were reasonable" (*Brown v Battle Creek Police Dept.*, 2016, p. 570; emphasis added).

The Sixth Circuit's contradictory stance on officer testimony may appear strange at first, but it is a continuation of a judiciary custom for narrowing the list of those individuals with the authority to establish the official narrative of the shooting. We see that the judiciary protects the sacredness of officer safety by either broadening or narrowing the list of authorized knowers relative to where the social system stands in the dispute. The judiciary broadened the list of authorized knowers by declaring that human experience and common sense as the guiding framework when declining to establish a bright-line restricting the discretion of the police. Yet, the U.S. Supreme Court restricted itself and lower courts to a rigid set of parameters when deciding use of force cases by requiring judges to place themselves in the proverbial *shoes* of the officer: "The 'reasonableness' of a particular use of force must be judged from the perspective of a *reasonable officer on the scene, rather than with the 20/20 vision of hindsight*" (*Graham v Connor*, 1989, p. 396; emphasis added). Stating this differently, the judiciary is required to make their determination regarding the reasonableness of an officer's use of force based on whether another officer facing the same situation as the officer in question would respond in the same manner instead of hindsight which incorporates the perception of citizens who do not have a scintilla of police training. Again, this broadening and narrowing of authorized knowers influences the facts, and by extension the narrative, the judiciary will consider when deciding summary judgment and qualified immunity. This aspect of the *Brown* (2016) decision finds itself a part of a long lineage of court decisions declaring

the shooting of dog by police as reasonable. Although the United States Supreme Court has declared that “[t]he evidence of the nonmovant [the one disputing summary judgment] is to be believed, and all justifiable inferences are to be drawn in his favor” (*Anderson v Liberty Lobby, Inc*, 1986, p. 255), the judiciary tends to favor the police’s version of events over that of the nonmovant when an officer’s narrative is being contested on its veracity.

Non-Submission and Officer Safety

Although dogs cannot be arrested, they can still be non-submissive. “[N]onsubmission [*sic*] includes an attempt to run away, a passive refusal to do as the officer orders, or even the mere appearance of dangerousness—a failure to dispel the perception of possible attack, one might say” (Ristroph, 2017, p. 1207). Once an officer perceives an individual as non-submissive—even if the officer is mistaken—the officer is authorized to use force to achieve compliance (Ristroph, 2017). An aspect of this compliance is doing exactly as one is commanded. The United States District Court for the District of New Jersey partially justified the shooting of a dog by an officer as reasonable because the dog “ignored [the officer’s] commands to ‘stop’ and ‘heel’” (*Petitt v New Jersey*, 2011, p. 20). In *McCarthy v Kootenai County* (2009), the shooting of a dog was declared reasonable because “[t]he officer indicated that he felt threatened by the two attacking dogs and his *verbal commands* did not cause the dogs to stop attacking” (pp. 15-16; emphasis added). Although deemed unreasonable on other accounts, a United States District Court in Texas did not criticize the police

chief's attempt of yelling at a dog to get its attention and gain its compliance (*Kinchloe v Caudle*, 2009). In these instances, the judiciary is not suggesting that dogs understand or speak English; rather, the dog's body is a conduit for transmitting and reinforcing the sacredness of officer safety to the public. In a nationally publicized incident of an officer involved shooting of a human, Officer Yanez shot Philando Castile—who was reaching for his identification—because the officer believed Castile was reaching for a weapon after informing the officer that he was armed (Ali, 2017). According to Officer Yanez, he shot Castile because “Castile did not have ‘regard for his commands,’ and he [Officer Yanez] felt the motorist would shoot him” (Ali, 2017).

Ristroph (2017) is correct when she states that the same frameworks normalizing traffic stops help normalize deadly force against unarmed suspects. However, what Ristroph (2017) does not make explicit in her analysis, although it is implied, is that violence underscores every police-public encounter. In other words, the possibility of being the recipient of police violence is always bubbling under the surface during any police-public encounter. It is this foundation of violence which shifts the burden of officer safety onto the motorist much like it shifts the burden to dog owners who are expected to alert the police that a dog is on the premises. Even then, the dog(s) may be considered a threat to the officer's safety and possibly shot to protect said safety. In *Perez v City of Placerville* (2008), the court was distinguishing the difference between the “facts” in that case and those in *San Jose Chapter of Hells Angels* (2005) by stating “the

facts suggested here that the officers *suspected* a dog might be present at the scene but they had *no confirmation* of that fact” (p. 27; emphasis added); similarly, in *Smith* (2017), the court justified the shooting of dogs by police because “[the dogs’ owners] did not *register* their dogs, which might have *alerted the police* that there were dogs in the residence” (pp. 25-26; emphasis added); a district court in Michigan declared the shooting of a reasonable because there was no evidence presented which indicated that “[the officer] should have known in advance that the dog was present, so that he could have arranged to deal with the dog in a non-lethal or less intrusive manner” (*Hayes v City of Detroit*, 2017, p. 5); finally, an officer shooting a dog was declared reasonable because the officer “did not notice a sign on the wooden gate that *warned* of a dog on the premises and was unaware that Plaintiff had a dog” (*Bateman v Driggett*, 2012, p. 3; emphasis added). Even in a case where the court denied the request by officers for summary judgement, the responsibility for alerting an officer to a potential danger still exists. Officers in *Anderson v City of Chicago* (2016) “admit that Anderson told the officers about the two girls [who were in the residence] but deny that they were *told* about the dog” (p. 2; emphasis added).

Unlike these instances, the officers in *Brown* (2016) were advised of a dog’s presence prior to executing the search warrant. When the officers arrived on scene, they visually confirmed the presence of dogs via the front window. Although the Sixth Circuit’s analysis of *Brown* (2016) does not indicate if Mr. Brown informed the officers about the dogs’ dispositions (e.g., friendly), the

possibility that a dog may be threatening oftentimes overrides the dog's true disposition. In *Warboys v Proulx* (2004) a canine unit and two other officers were tracking a suspected car thief when they came across a "pool of scent" (p. 113) believed to be left by the suspect. The scent pool's location was in a parking lot near a multifamily residence building. Warboys brother walked out from one of these nearby multi-residential buildings with his brother's dog. He was immediately ordered to return inside for his safety; however, Warboys' dog got out into the parking lot through the open door before Warboys' brother could comply with the officer's command. The dog went straight for the canine unit in a friendly manner but was still shot by the officer from the canine unit. Although the court in this case accepted as factual that the dog "was a gentle, loving pet that had never attacked an animal or a person" (p. 114), the court relied on belief that every police-public encounter is a potential danger to officer safety.

The court acknowledges that Blitz [the dog] may indeed have approached the officer and his police canine merely to greet and sniff them or to receive a friendly pat on the head. At the same time, however, the court notes that had Proulx refrained from shooting the pit bull when he did and had Blitz's behavior turned out to be hostile, it would have been too late for Proulx to use his firearm safely in order to defend himself and his police dog (*Warboys v Proulx*, 2004, p. 118).

Likewise, the United States District Court in *Powell v Johnson* (2012) relied on *Warboys* (2004) reasoning when deciding that the officer in *Powell* (2012) acted reasonably.

The incident in *Powell* (2012) arose from a call concerning a possible shooting suspect running toward the neighborhood where Powell resided. The

officers began to walk down the alleyway searching for the suspect when they came across Powell's home. According to Officer Johnson's testimony, both the garage door and the service entrance to the garage were open. Officer Johnson believed "this was unusual" (p. 872) and entered the garage where he briefly searched the garage before moving into the backyard via the service door. Powell's dog, Blu, noticed Officer Johnson and began walking toward him. The officer did not see Blu during his search for the suspect and began to return to the alleyway when he heard Blu behind him. Officer Johnson claimed that Blu was running at full speed toward him which caused Officer Johnson to shoot Blu for his own safety. Relying on *Warboys* (2004), the court in *Powell* (2012) concluded that Officer Johnson did not have the luxury to wait and discover Blu's *real* intentions before protecting himself from a possible attack. Although an officer's request for summary judgment was denied, a U.S. District Court took into consideration that the officer did not have time to ascertain the intentions of a dog prior to shooting (*Sneade v Rojas*, 2014). Some may argue that the officers' actions in these scenarios are the result of the dogs advancing on the officers in an aggressive manner. However, it should be noted that the "lunge" referred to by the Sixth Circuit in *Brown* (2016) was nothing more than the first dog "[moving] a few inches' between the time when [officers] entered the residence and when [the officer] shot [the dog]" (*Brown v Battle Creek Police Dept., et al.*, 2016, p. 563). Again, the Sixth Circuit decision in *Brown* (2016) is not unique in that a dog being unrestrained is grounds for finding an officer's shooting of said

dog as reasonable. A dog's mere movement when unrestrained has always been indicative of aggression.

In *Birkes v Tillamook County* (2011), a deputy with the Tillamook County Sheriff's Office received a complaint about campers driving their ATVs through other campsites at all hours of the night. The deputy noticed three ATVs traveling down the highway while talking with the complainant and decided to follow them to their campsite. At their campsite, the deputy noticed a group standing around a vehicle and a dog walking around unleashed as well. When the deputy approached the group, he identified who he was and ordered them to restrain the dog. The group tried to grab hold of the dog but failed. The deputy while backing away gave two more orders for the group to restrain the dog. According to the deputy's narrative, the dog came within a couple of feet of the deputy's leg which forced the deputy to push the dog with his left hand while reaching for his sidearm with his right hand. It was at this moment that the deputy shot the dog who later died of his injuries. In *Sandoval v Las Vegas Metro. Police Dept.* (2014), officers were investigating a possible burglary at a house and saw three juvenile males who were "listening to music, watching T.V., and playing video games" (p. 1159). Officers entered the residence and ordered the three boys to leave the bedroom. One boy asked if he could secure the family dog, his request was denied by the officers. "As the boys exited the bedroom. [The dog] slipped in front of [two boys], but continued to walk behind [the third]" (*Sandoval v Las Vegas Metro. Police Dept.*, 2014, p. 1159). An officer responding to a witness'

request to meet believed his safety was in danger when two dogs on the witness' property started "moving toward him" (*Gregory v City of Vallejo*, 2014), and two other dogs were shot in Erie, Colorado when two dogs "continued to approach [the officer]" as he was backing away from the dog's owner's property (*Moore v Town of Erie*, 2013, p. 2). The shooting deaths of multiple dogs were deemed reasonable because they were running loose and unrestrained (*Altman v City of High Point*, 2003). These decisions and many others like them raise the question, how does the dangerous dog construct facilitate police violence?

CHAPTER FIVE

FINDINGS 1: POLICE VIOLENCE AND THE “DANGEROUS” DOG

Dogs are unique in that they exist in a state of limbo (*Sentell v New Orleans and C.R. Co.*, 1897). Although directly descended from wild dogs (e.g., wolves, foxes, minks, etc.), they are not perceived of as “wild.” They live and work alongside humans, but they are not livestock. Furthermore, dogs, like most animals, are portrayed as nonessential to the continuation of modern American society (Soron, 2011); yet, dogs have been shaping human social life ever since the domestication of wolves over 10,000 years ago (Alves, 2016). Through this domestication process, humans are able to use animals—especially dogs—for a variety of functions in the preservation and continuation of human society. “As pack animals with a social hierarchy, dogs seem to easily embrace the concept of friend versus foe or known versus unknown” (p. 3), and with the dog’s natural skills for hunting, tracking, herding, and fighting, made the species a suitable ally in the protection of humans and their property (Delise, 2007). Eons later, dogs are still being used to protect humans and their property. “Ask just about any home-safety expert about the best way to protect your home and property,...you’re likely to get the same answer: Get a dog” (Rabin, 2016, para. 4). This view of dogs as personal protectors relies on the dog’s natural ability to harm, injure, and-or kill with its bite.

On average, there are approximately 12 to 24 human deaths per year that are attributed to dog attacks in the United States (Delise, 2007; see also World

Health Organization, 2018), and in half of these incidents the victim was a child (American Veterinary Medical Association, 2018b). Furthermore, half of all biting incidents occur in the home with a dog that is familiar to the human (Centers for Disease Control, 2018). Finally, the probability of being bitten increases with the number of dogs in one's residence—households with 2 or more dogs are 5 times more likely to experience a biting incident compared to households without dogs (Centers for Disease Control, 2018). The American Veterinary Medical Association (2018b) has recently stated that “it is not a dog's breed that determines whether it will bite, but rather the dog's individual history and behavior.” Yet, the misconception that certain breeds are more prone to bite than other breeds persists. Constructing dogs as *dangerous* requires the creation of an image that perpetuates a threatening stereotype (Delise, 2007). One avenue for constructing this image is through media portrayals of specific dog breeds as inherently dangerous. Another avenue, however, is through the judiciary. That is, through the legal decisions that form the foundation of modern legal doctrine.

The judiciary's responsibility in the creation of the *dangerous dog* is to provide the legal framework for transforming a group of sentient beings into an aberration that acts as a focal point for all of society's biases. The goal of this chapter, then, is to demonstrate how canicide – or the police practice of killing dogs, whether pets or strays – depends upon the figure of the dangerous dog to regulate human behavior. More specifically, this chapter takes on the mediated and legal *construction* of the dangerous dog in that the figure of the “dangerous

dog” does not exist outside of its politico-legal and historical-cultural construction as *threat*. This isn’t to deny that dogs, as biological beings, can be harmful in their own right. This much should be obvious enough. Rather, the point is to underline the fact that for police to shoot and kill a dog the dog has to be constructed as dangerous. This construction must not only make the dog a threat to the physical safety of a human, but it must also make the dog a threat to the society itself. Law enforcement facilitates the dangerous dog construction by focusing policing efforts on curbing dog fighting as an insidious practice (Delise, 2007). It is this association with dog fighting where many of the misconceptions about the pit bull’s abilities began to flourish as the popularity of pit bulls began to rise. This association of the pit bull with criminality and populations marginalized by society has made the pit bull America’s canine version of *persona non grata* (Delise, 2007).

The Dangerous Dog and Police Violence

Dogs are efficacious for protection because there is a human fear attached to dogs (Rabin, 2016). Specifically, it is the fear of being hunted and attacked by canines (Delise, 2007). This fear is powerful enough that one expert believes dogs have a greater psychological impact on the human condition than a gun (Rabin, 2016). Constructing a breed of dog as “dangerous,” then, requires the creation of an image that perpetuates a dangerous stereotype (Delise, 2007), and this image must tap into that innate fear humans have for dogs. Accomplishing this feat is done by disseminating the “dangerous image” through

those social structures that are intimately connected to the human experience. Even the type of dog favored becomes a form of self-identification and class identification. Poor blacks and whites are mostly in the same the same boat regarding the pit bull. The middle-classes disdain for the poor carries over in its disdain for the pit bull; that is, unless someone from the middle-class steps in to “save” the pit bull (Dayan, 2016). When talking about the first pit bull police dog in New York State, Brad Croft—who is operations director for a company that trains dogs and police to be successful K-9 units—stated, “They’re just good, good dogs. The Achilles heel is the stigma” (Gutierrez, 2017, para. 10). A K-9 officer in Kansas stated, “Kano and I plan to get out there and help try to change the bad name that so many have given the Pit Bull,” (WGN 9, 2017, para. 4). “Wildflower the pit bull was going to be euthanized before she was given the opportunity to serve alongside police officers in Oklahoma” (Alanis, 2018, para. 1). The dangerous dog phenomenon facilitates police violence in three ways.

First, the word “dangerous” quickly narrows the list of dogs down to specific breeds officially labeled as such by the courts, legislature, or public opinion. In *Dahm v City of Miamisburg* (1997), the United States District Court for the Southern District of Ohio, Western Division upheld the officer’s discharge of his service weapon at plaintiff’s dog because of the “Plaintiff’s past criminal history, his ownership of a pitbull, and his perceived non-compliant attitude toward authority” (p. 14). The dissent in *Brown v Muhlenberg Twp.* (2001) relied heavily on the dog’s breed—Rottweiler—for justifying the reasonableness of the

officer shooting the dog. The United States District Court for the Eastern District of Columbia upheld an officer's shooting of a dog as reasonable partly because he "encountered...a medium-sized pitbull, which courts have noted are an aggressive breed of dog bred for fighting" (*Newman v City of Fresno*, 2018, p. 16). Even when an officer's actions are deemed unreasonable, the dog's perceived dangerousness still plays a role in the court's decision. A federal district court in *Branson v Price* (2015) reasoned that an officer acted unreasonably when he shot a dog even though the officer "reasonably perceived the dog to be a dangerous breed" (p. 17). These judicial decisions and other like them highlight that although "police decisions and procedures leave unknown the number of deviants not labelled and processed, court decisions and procedures enable the next stage of the system to be more precisely observed" (Cohen, 2002, p. 109). That is, the courts officially apply the label of deviant or dangerousness to the selected being which effectuates the symbolization process.

Similarly, an owner's deviant status taints any of their companion animals as equally deviant. What occurs is an endless cycle of humans who have an inclination to possess things that are intimidating and frightening searching for "dangerous dogs" so that they can increase their own sense of power and influence (Delise, 2007; Harding, 2010). For these individuals, "[s]tatus dogs provide [a] reputation via a recognised [sic] pedigree of violence or credible threat of violence" (Harding, 2013, p. 262). Furthermore, using dogs protective

functions require dogs to retain the aggressive nature of their wolf ancestors. As long as dogs perform this protective function within the parameters set by humans, then the dog's aggressive responses are not perceived threatening or dangerous (Delise, 2007). Again, these parameters traditionally allow aggression against those deemed as social outcasts (Delise, 2007). Dogs that fail to adequately discern between who is worthy of aggression and who is not are deemed *dangerous*. The "dangerous dog," then, becomes an unwitting part of a perceived threat to the survival of a society. The pit bull has been transformed into both a wellspring for demonstrating one's "toughness" (Dickey, 2016) and a symbol of social decay.

Second, the dangerous dog construct compounds the effects associated with racialized police killings in general. This effect is evidenced by the types of public reaction to the killing of dogs as opposed to the killing of humans. Traditionally, police are unsuitable enemies because they have the political power to downplay and divert any attention focused on them (Cohen, 2002). Furthermore, a sizable portion of the public rally to provide "support and admiration for the police" (p. 107) in those instances where the actions of the police are called into question (Cohen, 2002). This public support for agents of social control extends to the media as well. Many newspapers legitimize and normalize police violence against marginalized populations by the way they narrate the killing of a human by police (Hirschfield & Simon, 2010). When reporting on crime, many news organizations construct the social image of the

individual as a criminal by highlighting their activity and possible history (Lyon, 2009). This close relationship between the media and the police provides a non-legal method for creating a folk devil to be opposed. These folk devils, however, oftentimes resemble members from marginalized populations. News stories reporting on the killing of citizens by police officers do not offer counter-narratives to the government's version of events (Hirschfield & Simon, 2010), thus reinforcing the police's version of events as the truth (Shudson, 2002). This unquestioning reliance on the police for the official version, however, does not always apply to the killing of a dog by police.

Using the officer with the New York Police Department who shot a dog trying to defend its *owner* who was having seizure (Sandoval, McNulty, & Armaghan, 2012) helps highlight this difference. First, the article's title—"Shot Trying to Save His Master"—indicates that there is some resistance to the reasonableness of the officer's actions. Second, the article places the responsibility of the dog's actions on the officers: "Three cops surrounded the man and tried to roust him, *angering* the dog, according to witnesses" (Sandoval, McNulty, & Armaghan, 2012, p. 4; emphasis added). The use of the word "angering" removes any possibility of labeling the dog as "vicious" or "dangerous" since the word implies the dog is normally passive. Another witness stated that, "The homeless guy looked like he was having a seizure - the dog *started acting defensive*" (Sandoval, McNulty, & Armaghan, 2012, p. 4; emphasis added). As with the word "angering," the phrase "starting acting defensive" implies that the

dog's behavior was a reaction to the behavior of the officers and that the dog was acting naturally by being "defensive" of its owner. Likewise, another witness stated, "The dog was just defending its owner and the cops shot it in the head" (Sandoval, McNulty, & Armaghan, 2012, p. 4). Not only does this witness also view the dog's behavior as justified, he places the responsibility for the dog's death on the police—"the cops shot." Juxtapose this view with the statement from another witness and one can see how subtle shifts in language alter the narrative by altering who is responsible: "The dog barked and jumped at the cop. The cop shot him in self-defense" (Sandoval, McNulty, & Armaghan, 2012, p. 4). Here the cop still actively shot the dog, but the onus for the shooting was on the dog for barking and jumping.

In 2010, a "D.C. police officer shot and killed a festival-goer's dog amid hundreds of onlookers in Adams Morgan on Sunday afternoon in an incident that was either completely justified or totally unnecessary, depending on whom you ask" (Zapotosky, 2010, p. B01). From this very first sentence of the report, the reader is asked to scrutinize the officer's actions. Witnesses agree that two dogs were snapping at each other during the festival when the police got involved which resulted in the death of a dog. The owner of the deceased dog claimed to have been subduing his dog after he turned and bit a poodle passing by when the officers arrived. Immediately following this background information is the dog owner's version of events:

That's when a D.C. police officer took over, putting his knee in the middle of Parrot's back while he pulled the dog's forelegs behind him, [the dog

owner] said. He said that the officer then grabbed Parrot [the dog] by his neck and threw him over a banister at the Brass Knob antique store and that just as the dog righted itself, the officer pulled out his gun and fired (Zapotosky, 2010, p. B01).

Zapotosky (2010) goes on to quote the dog owner: “The officer drew his gun in an unnecessary act of cowboy gunslinging law enforcement and shot my dog amidst a crowd of thousands” (p. B01). The dog owner’s “account is supported by at least one witness” (p. B01) according to Zapotosky (2010). Here the author lends credence to the dog owner’s version of events by highlighting that it is supported by another person and that there may be others who witnessed the event in a similar fashion (i.e., “at least one witness”).

As for the police version of events, it begins slightly before the shooting: The “commander of the 3rd Police District, said that once the officer pushed the dog down the stairwell, ‘the dog immediately turns and runs at the officer aggressively’” (Zapotosky, 2010, p. B01). First, the police attempt to control the development of the narrative by denying the reader the right to *know* why the officer pushed the dog down the stairs. Beginning with the push, the events preceding it are deemed irrelevant to the police. Second, pushing a dog down stairs, although not preferred, creates a different perception of events than an officer “throwing” a dog over a railing. Third, the commander relies on *Graham* (1989) when describing the incident by implying a version that was quickly evolving and requiring a split-second decision via *the dog immediately turns and runs at the officer*. This reliance on *Graham* (1989) is expanded to include officer

safety by describing the dog's advancement as "aggressive." Fourth, the article closes out the police version of events with the commander proclaiming that "It's definitely going to be justified based on everything that we know" (Zapotosky, 2010, p. B01). Although this should be definitive as to the reasonableness of the officer's actions and a strong argument for accepting the police version as the truth, the information comes from a third party entrenched within the halls of the police department instead of from the officer themselves. Filtering the narrative through the police's command structure without reference to the officer essentially erases the officer from the scene.

Third, maintaining a system of violence underlying all police encounters requires the creation of a narrative that situates the society as constantly under attack from internal and external threats. The officer operates as "someone with whom you can identify, someone who could have been and one day could be anybody" (Cohen, 2002, p. xii). Although the officer operates as a suitable victim that is relatable, canicide helps reinforce the idea that the continuation of civilized society rests in the hands of a "chosen few" who put the safety of others above their own. Constructing the police as sole entity holding the "wall" also situates the police and the criminal justice system as outside American society. Dogs "contain a latent threat to human safety" and they "can be unpredictable both in their actions and in the signals they send" (*P.M. v Bolinger*, 2011, p. 20). A federal district court in Minnesota declared the killing of a dog as reasonable because Officer Johnson testified that the dog had its "mouth open, teeth glaring,

and . . . looked extremely aggressive” (*Powell v Johnson*, 2012, p. 876). The Fifth Circuit granted an officer qualified immunity because Officer Duncan was startled by a large dog that was showing its teeth (whether baring them aggressively or "smiling" [as the dog owner claimed]) (*Stephenson v McClelland*, 2015, p. 185). In *Romero v Bexar County* (2014), a federal district court granted an officer summary judgment because “several large dogs ran out aggressively charging, barking and growling, at Deputy Phillips and me (sic)” (p. 661). In these incidents, the officer becomes the physical manifestation of the both the society’s social control mechanism and the society itself. Therefore, an attack on the officer is perceived as an attack on the society by jeopardizing the safety of its *protectors*. Regulating one group means regulating one of the dog’s natural abilities that humans both fear and admire—its bite.

The Bite

Humans have used the dog’s biting ability to terrorize and oppress others. “All you gotta do is tell them you're going to bring the dogs. Look at 'em run. I want to see the dogs work” (*Freedom: A History of Us*, 2002, para. 2). This statement was made by Theophilus Eugene “Bull” Connor regarding the civil rights demonstrations in Birmingham, Alabama. The legacy left by Bull Connor and his dogs will be remembered for generations; yet, his legacy is a continuation of humans appropriating the dog’s bite for their own benefit. Slavers would have slaves whip and abuse the dogs under their care, and then the slavers would set the dogs loose on the slave to hunt them down (Yingling &

Parry, 2021). One of the most feared breeds during this time was the Cuban bloodhound (Yingling & Parry, 2021). Bartolome de Las Casas relied on bloodhounds to help subjugate and decimate native populations, both the Union and Confederacy used Cuban Bloodhounds during the Civil War for tracking and guarding prisoners, and the Van Buren administration relied on Cuban bloodhounds in the removal of the Seminoles from Florida (Delise, 2007). Even the Roman Legion used dogs to harass and intimidate the Legion's enemies during expeditions (Sloane, 1955). Just as the officer's "badge renders the violent work of policing legitimate and justified, but also noble and sacred" (Correia & Wall, 2018, p. 115), the dog's bite becomes symbolic of its virtue and nobility.

A nine-year-old boy in Nebraska was saved from an intruder by the family pit bull (Khan, 2018). After the intruder broke into the house, he began chasing the nine-year-old who called for his dog Baby Girl. It was at this point that Baby Girl attacked the unwanted man and chased him from the premises (Khan, 2018). In Texas, a pregnant woman fended off an assailant with the aid of her dog Rowdy (Fox4News, 2018). The man, who was swinging a pear knife at her, was bit by Rowdy and subsequently fled the location (Fox4News, 2018). A family's dog (Rosie) was shot with a BB gun by a potential intruder in Albuquerque, New Mexico after the dog began barking at the individual (Nguyen, 2018). An Oklahoma City man was arrested on burglary and drug possession charges after he broke into a house and was subsequently set upon by the family's Doberman Pinscher Prince (Miston, 2018). In 2017, a Houston news

crew did a story in which they pretended to be intruders by entering the homes of three Houstonians—with the owners' permission—to see if the families' dogs would attack (Roberson & Spencer, 2017). None of the dogs attacked the “intruders”—who were dressed in bite suits, but one dog made any sign that further intrusion would result in injury (Roberson & Spencer, 2017).

The owner of the one dog who showed signs of aggression in the Houston example stated that he was “proud of him [the dog]” (Roberson & Spencer, 2017, para. 32). Likewise, Rosie's family was quoted as saying, “She did what she was supposed to do. She protected her family and she definitely scared whoever it was away” (Nguyen, 2018). According to Prince's family, “We're big dog lovers. And he's a good boy. But he doesn't like strangers in his house” (Miston, 2018). Likewise, Baby Girl (the dog from the Nebraska incident) was reported as “[doing] the job” when she attacked and chased away the intruder. It is apparent, then, that a dog's aggressive responses to humans are not perceived as threatening or dangerous so long as the dog's aggression falls within the approved parameters set forth by humans (Delise, 2007). For the Houstonians whose dogs did not attack or attempt to harm the intruders, they were “stunned” (para. 16) and “disappointed” (para. 22) in their dogs' behaviors (Roberson & Spencer, 2017). What these pleasures and disappointments reveal is that the dog's bite is approved of when it is in the service of humans.

The dog's bite becomes demonized when it no longer serves those in power (Delise, 2007). On May 30, 2018, an 8-month-old girl was killed when she

was bitten by one of the family's dogs—a male pit bull (Roustan & Pesantes, 2018). In the *Sun Sentinel's* write up, the incident was described as such: “The mauling happened while the grandmother was transferring Thor from one room to another and *it* overpowered her, Diaz said. That's when *it* attacked *the baby*” (Roustan & Pesantes, 2018, paragraph 7; emphasis added). First, what we see is that the dog in question went from having a sentient status and an identity via the name “Thor” to having both stripped away with the label “it;” all within a single sentence. What makes this removal of a living being's sentient status is that sentient beings act and react to stimuli while things just function or malfunction. Removing Thor's sentience and identity with the label *it*, then, absolves the human readers from having to engage in the mental processes associated with ascertaining why Thor would act in such a way. Instead, the readers are now able to perceive Thor as an abstraction or caricature of the “typical” pit bull. Thor is now an object that malfunctioned and caused the death of a human child. As an “it,” the *Law* is now able to direct its power toward the human(s) who were “controlling” Thor. This ascription of responsibility and intent to the human is evidenced by the Medical Examiner's conclusion that the incident was accidental which led Miramar Officer Diaz to confirm that “no one will be charged in the incident” (Roustan & Pesantes, 2018, paragraph 8). The removal of Thor's sentience also transforms him into a folk devil.

Folk Devils and the Pit Bull

Folk devils are individuals or groups that serve as a reminder of who or what a given society deems reprehensible or threatening (Cohen, 2002).

Traditionally, a society's folk devils come from their young, working-class males who are portrayed as desiring nothing more out of life than to commit senseless acts of violence (Cohen, 2002). The purpose of folk devils is to unify a diverse group of people by constructing one group as the cause of society's troubles (Cohen, 2002). In the 1990s, society willingly accepted the idea that a new *breed* of juvenile offenders—the “super-predator”—would arise from “homes where unconditional love is nowhere but unmerciful abuse is common” and feast upon the soft underbelly of *decent* society (DiLulio, 1995). Recently, the lawyers and supporters of former President Donald Trump have pointed to a group called “Antifa” as the cause of the riot on Capitol Hill (Anderson, 2021). Although a folk devil can come in many forms, they are often associated with marginalized populations and it is the responsibility of the criminal justice system to regulate these groups and their members (Stults & Banner, 2007).

As a focal point, folk devils serve as the catalyst for moral panics. Moral panics arise from perceived threats to one's way of life and are sparked by events that are either extreme or rare (Cohen, 2002). Following the spark, the community is in a state of *limbo*—that moment between the conclusion of an event and inventory phase. The inventory phase is where one begins taking stock of what just happened and of our own well-being (Cohen, 2002). “In this

period, rumours and ambiguous perceptions become the basis for interpreting the situation” (Cohen, 2002, p. 24). It is during the inventory phase that reports (from the media or word of mouth) that the elements of an event might be exaggerated or distorted. The more dramatic and shocking a case the more likely a moral panic can be created. These traditional folk devils, however, do not provide the necessary justifications to sustain the increased use of force by police beyond the moral panic’s resolution. Approaching canicide from this perspective reveals that each incident is treated by the judiciary as a miniature moral panic.

First, the spark for these miniature moral panics is the shooting of the dog. Some may argue that it is the dog’s behavior which is the spark or the officer’s fear that sets the moral panic off; however, it is not the dog’s behavior or officer’s fear that results in the cascade of lawsuits and public debates regarding the reasonableness of the shooting but the actual aiming, trigger squeeze, impact, and the dog’s injury or death that resonates with the public and provides the grounds for subsequent lawsuits. Second, these incidents have a suitable enemy—the dog, especially if the dog(s) happen to fall under the term “Pit Bull.” Cohen (2002) defines a suitable enemy as “a soft target, easily denounced, with little power and preferably without even access to the battlefield of cultural politics” (p. xii). In *Taylor v Lott* (2018), officers executed a no-knock warrant in the early morning hours on December 19, 2013. The officers believed that the plaintiff’s son—who was a suspect in a homicide investigation and drug

investigation—was residing at the home when the warrant was executed (Taylor, 2018). The plaintiff was injured by flying shrapnel when the officers detonated an explosive device to breach the home's front door.

The United States District Court for the District of South Carolina, Columbia Division upheld the constitutionality of the no-knock entry based on the “drug activity at the plaintiff's residence and the dangerousness of the plaintiff's son...and others who either lived at or frequented the residence...provided the officers with reasonable suspicion that occupants in the residence would present a danger to law enforcement or inhibit the investigation” (*Taylor v Lott*, 2018, p. 5). Although not explicitly stated, it is plausible that the term “occupants” includes the “vicious dog” who received 10 points on the officer's threat assessment. Putting the dog's score into perspective, being a suspect in a homicide investigation is worth 35 points (*Taylor v Lott*, 2018). A “vicious dog,” then, is one-third the value of being a suspect in the killing of another human being. Furthermore, “suspects with a criminal history relating to resisting arrest or combativeness with police” also receive a score of 10 points while “suspects with a criminal history relating to firearms” and the “existence of handguns at the location” both receive 15 points (*Taylor v Lott*, 2018, p. 8; footnote 3). The First Circuit in *United States v Jewell* (1995) upheld a no-knock entry based on the Jewell's criminal history and the presence of a pit bull at his residence. According to the First Circuit, “[t]he Fourth Amendment did not require the police to risk having to fight off a forewarned *attack dog* before executing their warrant” (*United*

States v Jewell, 1995, p. 24; emphasis added). Likewise, the Seventh Circuit upheld an officer's actions because "exigent circumstances certainly existed to excuse any requirement of arousing armed defendants, or their dog" (*United States v Buckley*, 1993, p. 558).

In *Davis v State* (2007), an officer applied for a no knock warrant for Mr. Davis' residence. The affidavit for the warrant listed Mr. Davis prior criminal history, his likelihood to resist based on reports from other officers, and the presence of a "pit bull type dog inside the residence" (p. 3). Although the officer requesting the no-knock warrant had never interacted with the pit bull at Mr. Davis' residence, the officer listed the dog's presence as a possible threat because in his experience the pit bull "breed is known...to be particularly vicious and often used for protection" (p. 3). Analyzing the officer's statement from viewpoint of Adams' (2010) third way of transforming someone into an absent referent (i.e., metaphorical) reveals that the dog loses its agency from two directions. First, the pit bull at Mr. Davis' residence is bestowed the label of *dangerousness* based on the popularity of the breed among certain *dangerous* populations. Second, the pit bull in this case loses its autonomy because it is no longer seen as an individual dog with a unique character and traits; instead, it is a representative of its breed. This view of pit bulls was the conclusion reached by the court in *Davis v State* (2007). According to the court in *Davis v State* (2007), "a reasonable police officer could infer from his knowledge and experience that such a pit bull may pose a threat to officer's safety" (p. 14). Overall, the presence

of a dog can be used as a justification for a no-knock warrant, but it cannot be the only justification.

Finally, there must be a “consensus that the beliefs or action being denounced were not insulated entities (‘it’s not only this’) but integral parts of the society or else could (and would) be unless ‘something was done’” (Cohen, 2002, p. xii). The powerholders within a society react according to their “positions, statuses, interests, ideologies and values” (Cohen, 2002, p. 217). “As society’s officially designated agents of civil power, the police play a crucial role in the labeling process, both in the immediate reaction to deviance, as well as the ongoing reaction in later stages of the sequence” (Cohen, 2002, p. 97). In these miniature moral panics, the dog’s behavior is not viewed from the perspective of the dog. Rather, the dog’s behavior is viewed as indicative of its owner’s personal traits. The conflation of the dog’s behavior with the owner’s perceived personal characteristics forms within the symbolization process of moral panics. Symbolization uses communication to help create an event and its narrative (Cohen, 2002). The pattern followed by symbolization begins with “a word...[becoming] symbolic of a certain status (delinquent or deviant); objects (hairstyle, clothing) symbolize the word; the words themselves become symbolic of the status (and emotions attached to the status)” (Cohen, 2002, p. 37). The power holder’s pushing the moral panic try to establish negative symbolization to the event and its participants (Cohen, 2002). What makes the pit bull the perfect folk devil is that it is a construction within a construction. That is, the *Pit Bull* is a

simulation of a breed which makes the breed's image malleable enough so that it may be shaped into whatever tool (e.g., guardian, companion, or weapon) a society's powerholders need.

The Pit Bull Effect

The term "pit bull" is an amalgamation of many different breeds such as the American Staffordshire Terrier, Staffordshire Bull Terrier, Dogo Argentino, Cane Corse, Tosa Inu, and the Fila Brasileiro (Grider v City and County of Denver, 2011). The only commonality connecting these different breeds is that they all trace their lineage to the bulldogs of the nineteenth century (Lockwood & Rindy, 1987). The bulldog began its existence as a fighting dog and working dog intimately linked to the lower-class (Ritvo, 1986). This perception of bulldogs and dog fighting overlooks the fact that Queen Elizabeth would use fights such as bear baiting to entertain foreign dignitaries (Dickey, 2016). Growing public disgust for and legislation against bullbaiting placed the dog in danger of extermination until approximately 1880 when it became the darling of the aristocracy through the manipulation of its social history and physical appearance (Ritvo, 1986). As time passed, bulldog owners were no longer viewed as the dregs of society, but instead as respectable members of society (Ritvo, 1986). This new image of bulldogs was capped in part by large crowds of women at an all bulldog show in 1893 (Ritvo, 1986). This reconfigured image of the pit bull lasted throughout the early twentieth century. The pit bull was viewed as being suitable for watching children; it was a companion to Theodore Roosevelt; and a

wartime hero during World War I (Alonso-Recarte, 2020). However, a series of dog bites on children during the 1970s began to alter the pit bull's image (Reed, 2007). No longer America's canine sweetheart, the pit bull became symbolic of the urban (Dickey, 2016; Alonso-Recarte, 2020) and became associated with gangs (Maher & Pierpoint, 2011), the inner-city (Harding, 2010), and the drug trade (Junod, 2014). The malleability of the pit bull's image allows the judiciary to transform the dog at will in service of the government's policing powers.

The Eighth Circuit affirmed a lower court's upward departure from the United States Sentencing Guidelines when sentencing two defendants for animal fighting (*United States v Hackman*, 2011). Hackman's sentence was enhanced because the court believed his methods of training, fighting, and even killing losing dogs satisfied the criteria for classifying his behavior as extraordinary. The Eighth Circuit discussed an incident in which one of the conspirators hosted a contract fight which led to the electrocution of the losing dog after it had fought for approximately one and a half hours (*United States v Hackman*, 2011). In another example, the Eighth Circuit referred to a dog sold by Hackman and then later fought in a contract fight as a "canine victim" (*United States v Hackman*, 2011, p. 1081). The Fourth Circuit also affirmed a lower court's upward departure in sentencing based on the lower court's belief that the dog's constituted "vulnerable victims" (*United States v Hargrove*, 2012, p. 159). In *United States v Stevens* (2008)², the dissent argued:

² The majority's decision was affirmed by the United States Supreme Court in *United States v Stevens*, 599 U.S. 460 (2010).

dogs that are forced to fight are commonly the subjects of brutality and cruelty for the entire span of their lives: prior to the fights, they are intentionally emotionally abused and physically tortured in order to predispose them to violence; after the fights, dogs that do not perform well are not infrequently left to die untreated from their injuries or are simply executed (pp. 244-245).

Although not explicitly stated as victims, the dissent's description of a dog's experience in the world of dog fighting is meant to construct the dog as a vulnerable victim. Pit bulls are deemed worthy victims when they are used by humans for an activity that American society believes is deplorable. On the other hand, the judiciary uses pit bulls as threats to society in the nation's ongoing War on Drugs.

In *United States v Wheeler* (2003), the Sixth Circuit affirmed a lower courts allowance of Wheeler's status as a dog owner to help establish his role in the drug trade. The prosecution used Wheeler's statement that he would sic his dogs on the police as evidence that "showed consciousness of guilt" (*United States v Wheeler*, 2003, p. 301). Furthermore, the Sixth Circuit accepted the government's contention that Wheeler's ownership of his pit bull was "evidence that he possessed 'tools' of the drug trade" (*United States v Wheeler*, 2003, p. 301). An Oklahoma City police officer testified as an expert drug witness and stated that drug dealers commonly use pit bulls as a part of the drug trade (*United States v Poe*, 2009). The Tenth Circuit agreed and believed that a jury could infer intent to distribute drugs based on the Poe's possession of pit bulls along with Ziploc bags, surveillance equipment, scales, and other items (*United States v Poe*, 2009). This transformation of the dog occurs by denying the dog

the ability to use its natural abilities as it sees fit, and by extension, removing the dog's autonomy.

What the judiciary is doing is carving out a place for certain breeds of dogs within the realm of exigent circumstances. "Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant" (*Payton v New York*, 1980, p. 590). Officers may forgo the knock-and-announce requirement when "the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment" (*Mincey v. Arizona*, 1978, p. 394). In their affidavits requesting a no knock warrant, all officers have to demonstrate is reasonable suspicion that announcing their presence would (1) create an unnecessary threat to officer safety, (2) provide the suspect with an opportunity to destroy evidence, or (3) knocking and announcing the presence of police would be futile (*Richards v Wisconsin*, 1997).

When deciding whether the presence of a large dog, or a specific breed of dog, is enough to justify forgoing the knock-and-announce requirement, the judiciary have directed their focus on the animal's behavior in relation to the government's interests. The judiciary has held that the presence of a dog alone, even if it is a pit bull or other large canine perceived as inherently dangerous (*Commonwealth v Santiago*, 2008), is not sufficient to justify forgoing the knock-and-announce requirement when the animal poses no imminent threat (*Andrews v City of West Branch*, 2006; see also *Commonwealth v Santiago*, 2008). The

Court of Appeals for the Seventh Circuit upheld a no-knock search warrant because officers had prior knowledge that the suspect in question possessed a firearm and a pit bull, and that arousing either would create an imminent threat to officer safety (*United States v Buckley*, 1993). This stance was further supported by the Court of Appeals for the First Circuit when it affirmed the use of a no-knock warrant because officers had prior knowledge that a suspect not only owned a pit bull, but had prior arrests and convictions for violent crimes (*United States v Jewell*, 1995). Once the symbolization process is complete, the ownership of a “dangerous dog” becomes indicative of the owner’s moral failings. Constructing a breed of dog as *dangerous* requires the creation of an image that perpetuates a threatening stereotype (Delise, 2007), and this process is not unlike the construction of the “criminal” figure that is a central concern for critical criminologists and sociologists of deviance.

Policing in the United States has always been a contentious issue, especially since a society’s powerholders used the police to enforce their will upon the populace of minority communities (Walker, Spohn, & DeLone, 2012). It is not uncommon for the police to use aggression as a form of social control against minority populations by “stereotyping, dehumanizing, and objectifying” them (Bryant-Davis, Adams, Alejandre, & Davis, 2017, p. 866). In one study, a third of respondents reported witnessing police violence during their childhood while approximately half reported being victims of police violence themselves (Lee & Robinson, 2019). These experiences alone are enough to create civil

discontent within the targeted populace, especially when the population is powerless to prevent the criminalization of their behaviors and activities (Alexander, 2012). The purpose of criminalizing the behaviors and activities engaged in by the targeted group is to subtly establish the group as “criminals or security threats, [so] they can be restrained in their liberty, deprived of their rights, and ultimately undone as persons” (Dayan, 2011, p. 73). This tactic creates a criminal class, which is oftentimes racialized, that becomes a viable folk devil for maintaining the dominant racial and economic order of society (Alexander, 2012). As a result, many within these afflicted communities become hypervigilant about how they are perceived by the larger society (Lee & Robinson, 2019).

The conflation of a specific dog breed with a specific race should not come as a surprise since both breedism and racism are intricately linked (Skabelund, 2008). Fulfilling this role, pit bulls are “made to perform their stereotypical role as ghetto monsters that inhabit the criminal world” (Alonso-Recarte, 2020, p. 854). An aspect of constructing the pit bull as a four-legged serial killer that preys on society and attacks without warning is associating this image with toughness. For instance, the artist Pitbull “got his stage name from a friend who said he was like the dog of the same name—a fighter who didn’t understand the word ‘lose’” (Robinson, 2016, para. 3). Once the pit bull became symbolic of the inner-city, the breed eventually came to symbolize America’s “racial fears about crime and the American underclass” (Dickey, 2016, p. 145). As such, the pit bull became

iconographic of black masculinity in America (Alonso-Recarte, 2020), and in doing so linked “the pariah status of these stigmatised dogs with the low status of the stigmatised communities” (Hardin, 2010, p. 32). Isolating one, therefore, requires the isolation of the other.

Social Killing of the Dangerous Dog

A principle attribute of sovereignty is the ability to determine if another being lives or dies (Mbembe, 2019). Death establishes a being as an absent referent since whatever essence the animal had while alive is literally absent from its body upon death (Adams, 2010). Deeming a canine as a dangerous dog, however, does not require the literal death of the dog to make its body possessable by humans. Removing a sentient being’s autonomy makes the body possessable by other humans like any other form of property (Dayan, 2011). Dogs, like living humans, then, cannot be possessed unless they are socially dead which is “to be granted a natural life, while encased in unnatural death” (Dayan, 2011, p. 57). As such, the term “dangerous dog” condemns a canine or breed to a living death. Our identities are formed from our opposition to some form of Other (Mbembe, 2019). That is, we are who we are because we are not them. This same dynamic plays out in how we define ourselves as humans in comparison to dogs.

Associating humans with animals to elicit certain responses is not difficult since—socially speaking—we understand the social meaning(s) of these metaphors. In a study of 28 pit bull owners, it was discovered that many owners

of this breed perceived that strangers treated them with fear and apprehension (Twining, Arluke, & Patronek, 2000). Not only was this ostracizing perpetuated by strangers, but some pit bull owners discussed how family members would refrain from visiting solely because of their dog (Twining, Arluke, & Patronek, 2000). Due to this stance taken by society, pit bull owners had to develop coping strategies to handle the stigma. Coping strategies ranged from claiming their animal was a breed other than a pit bull or avoiding equipment associated with dog fighting to acting as an *ambassador* for the breed by highlighting its positive traits (Twining, Arluke, & Patronek, 2000). Respondents in the study also discussed how many in the public fail to identify their dogs as a pit bull at first sight, and the owner has to decide whether or not to inform the individual of the dog's breed (Twining, Arluke, & Patronek, 2000). How we "know" ourselves as humans, then, is a reflection of how we "know" animals as living *beings* (Johnson, 2012). Socially executing a breed requires altering how society perceives the breed, and this alteration occurs by transforming the breed into an absent referent.

Language allows those in power to strip a sentient being of its autonomy, and then reimagine the being as an object that fulfills a societal function resulting in what Adams (2010) terms the "absent referent." According to Adams (2010), there are three ways of transforming a sentient being into an absent referent. The first method is through death itself. Humans cannot truly possess another living Being until that Being is dead. For instance, a wild animal cannot be *possessed* until it is "killed or subdued" (Sentell v New Orleans & C.R. Co., 1897, p. 701).

The dangerous dog construct meets this first criterion of Adams (2010) through the actual death of the dog. The judiciary has consistently held that shooting a person's dog constitutes a seizure within the meaning of the Fourth Amendment (*San Jose Charter of the Hells Angels Motorcycle Club v City of San Jose*, 2005, p. 977; hereinafter *Hells Angels*). The Ninth Circuit held that the "killing of the dog is a destruction recognized as a seizure under the Fourth Amendment" (Fuller v Vines, 1994) and the Seventh Circuit in *Villo v Eyre* (2008) that "the [officers] had reasonable notice that killing Bubba would constitute the "seizure" of an "effect" within the meaning of the Fourth Amendment" (p. 710). Therefore, canicide reinforces the "dangerous" label applied to the dog because it was perceived as an immediate threat to the officer's safety, and the officer comes to possess the dog and its body when they kill it.

The second method put forward by Adams (2010)—reclassifying a sentient being's status within the *machinery* of society (i.e., definitional)—is evidenced in many court decisions as well.

"We agree with the reasoning of that case and affirm that the trial judge's holding that under the present facts the *juvenile's dog* was an offensive weapon" (*State in Interest of R.*, 1979, p. 351; emphasis added)

"Here, there was sufficient evidence from which a jury could lawfully find that *appellant's dog* was a deadly weapon..." (*Morris v State*, 1998, p. 850; emphasis added)

"Under these circumstances, a rational trier of fact could have concluded that petitioner used *the dog* as a deadly weapon, as defined by California law" (*Steward v Sisto*, 2008, pp. 11-12; emphasis added)

Using “dog” as the courts do in these cases replaces the term “it” as the go to generic pronoun, and this substitution side steps all negative social meanings attached to the term “it” while still maintaining and reinforcing the anthropocentric narrative embedded within the term. Moreover, these court decisions and many others like them reinforce the narrative that humans are meant to dominate nature by making the non-human the possessory interest of the human. Finally, the non-humans in these cases experience a double-erasure via the terms like “juvenile” and “appellant.” The courts’ use of these latter terms functions the same way as “it” or “dog” in that they remove the human’s sentient status. No longer are these people autonomous beings, but rather *something* that the criminal justice system must process. By extension, the dogs in these cases do not belong to any human but to abstract concepts created by the law. Therefore, dogs are the property of the Law.

Adams’ (2010) third method is metaphorical. A metaphorical approach allows humans to take the lived experiences of animals and appropriate these experiences to describe the human’s own experiences. “An example of this is when rape victims or battered women say, ‘I feel like a piece of meat’” (p. 67), or when the potent imagery of rape is appropriated from the “literal experience of women and applied metaphorically to other instances of violent devastation” (Adams, 2010, p. 68). This process occurs with animals as well. As an Auschwitz survivor stated regarding his opposition to a government proposal for rounding up Canadian geese and killing them: “My mother doesn’t have a grave, but if she

did I would dedicate it to the geese. I was a goose too” (Patterson, 2002, p. 141). This sentiment is not farfetched or hyperbole regarding the blurring of what is “human” with what is “animal.” A dog belonging to a Jewish family was racialized as a *Jewish* dog and subsequently shot (Sax, 2000). On the other hand, a dog owned by a German family was categorized as “German” and allowed to live (Sax, 2000). Likewise, many Britons during the First World War viewed dogs of German origin as Germans and thus enemies of the state (Howell, 2012). Teckels (a.k.a. dachshunds) were targeted by the British populace because the dog was the “national dog” of Teutonic Empire—the national dog of Germany (Howell, 2012; Tenner, 1998), and many teckels were abused or killed during the early part of World War I simply because of their association with Germany (Tenner, 1998). Even inanimate objects were not spared the hatred of the British populace. A locomotive was renamed from the Dachshund to the Bulldog as a means of making it more “British” (Howell, 2012).

Conclusion

The dog’s status as property is woven into the nation’s legal fabric through the pen of the legislature and judiciary (p. 247) which transforms the dog and its body into a deodand—“what must be given to God [*Deo dandum*]” (Dayan, 2011, p. 127). This legal concept traces its origins to the Middle Ages when the deodand was an integral part in the development of English jurisprudence (Sutton, 1999); reaching its pinnacle during the medieval and Tudor periods before being abolished in 1846 (Sutton, 1997). The basic principle by which this

legal concept operated was that the aggrieving party, almost always an animal or inanimate object (e.g., tree, cart, cargo ship, etc.), must answer for the harm it inflicted upon a human (Sutton, 1997). Deodands, then, were property possessed by another that was for forfeiting to the aggrieved party as restitution for the harm committed by the object. “If an ox gore a man or woman, that they die: then the ox shall be surely stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit” (Exodus, 21:28, King James Bible). In the following verse, the human is held accountable for the animal’s actions if the owner had knowledge that the animal had harmed on previous occasions. Slaves in the antebellum South were used much in the same way. If a slave harmed another, the slave’s owner would offer the slave up for punishment thereby absolving the slave master of his responsibilities to the aggrieved party (Dayan, 2011). Also, as with a slave roaming freely, dogs roaming freely were commonly believed to be diseased (McCarthy, 2016). Regulation of the dog’s movement by the state, especially the dogs of the lower-class, was necessary to maintain social order, even to the point of authorizing the killing of dogs that were caught roaming unsupervised (Delise, 2007).

The imagery of the dangerous dog is so powerful that Peters (2018) article in *Working Dog* magazine advises police officers to be mindful of how they present their dog to the public: “If you promote the use of your dog as a deadly weapon or involve the dog in an unjustified use of force, the public will blame you, not the dog” (p. 48). Canicide, however, shows that there are some cracks

in the dangerous dog armor donned by the judiciary. An article reporting on a New York City police officer who shot a dog entitles the article "Shot Trying to Save His Master" (Sandoval, McNulty, & Armaghan, 2012). From the outset, the article allows the reader to question the reasonableness of the officer's actions. The article places the responsibility of the dog's actions on the officers: "Three cops surrounded the man and tried to roust him, *angering* the dog, according to witnesses" (Sandoval, McNulty, & Armaghan, 2012, p. 4; emphasis added). The use of the word "angering" removes any possibility of labeling the dog as "vicious" or "dangerous" since the word implies the dog is normally passive. Juxtapose this view with the statement from another witness and one can see how subtle shifts in language alter the narrative by altering who is responsible: "The dog barked and jumped at the cop. The cop shot him in self-defense" (Sandoval, McNulty, & Armaghan, 2012, p. 4). Here the cop still actively shot the dog, but the onus for the shooting was on the dog for barking and jumping. Likewise in 2010, a "D.C. police officer shot and killed a festival-goer's dog amid hundreds of onlookers in Adams Morgan on Sunday afternoon in an incident that was either completely justified or totally unnecessary, depending on whom you ask" (Zapotosky, 2010, p. B01). From this very first sentence of the report, the reader is asked to scrutinize the officer's actions. Zapotosky (2010) lends credence to the dog owner's version of events by highlighting that the dog owner's "account is supported by at least one witness" (p. B01). What makes these counternarratives effective is that the human bond with dogs becomes the

focal point of the narrative instead of the dog's *aggressive* behavior. The readers are able to empathize with the owner, mourn the loss of the dog, and question the reasonableness of an officer's actions. This contradiction to Cohen's (2002) argument that the police are hardly ever *suitable enemies* and to the belief that pit bulls can never be *suitable victims* occurs because of the human-dog bond.

Dogs are the bridge that "joins persons to things, life to death, both in our nightmares and in our daily lives" (Dayan, 2016, p. xiii), and it is this bridging element that dogs bring to the human-dog bond that allows unknown strangers across the nation to form a unified collective that can empathize with the owner's plight. Although breed identification is difficult at best, the news relies on the "one drop rule" to assign the label of "pit bull" to a dog (Delise, 2007). As a result, dogs classified as "pit bulls" can be segregated from other breeds due to their inherent biological and social inferiority (Delise, 2007). Yet, this view of pit bulls and other "aggressive breeds" overlooks the fact that it is humans who have bred and trained pit bulls and other breeds for aggression, and it is humans who continue to breed and train for these traits.

Finally, the dangerous dog construct brings with it a sense of disease. A direct connection between the dangerous dog construct and disease is of course the rabies virus. Police have been authorized in the past to kill stray dogs to prevent the spread of the rabies virus and other zoological diseases (*Altman v City of High Point*, 2003). An article that appeared in *The News-Herald* on May 25, 1955 reported that police received three calls from neighbors in the Charlton

Street area. Unsure of whether the dog's issues were due to being sick, dying, or mad (i.e., rabid), the neighbors called police who responded to the location. Upon arrival, the officer located the dog and shot it ("Dog shot by police after complaints", 1955). In another incident, a dog warden—who refused to go out on a weekend to pick up an injured dog—advised local police to dispose of the dog; the dog was subsequently shot by "a patrolman and buried in at the town dump" ("Stratford to probe claim", 1960, p. 16). In Gettysburg, PA, police killed a stray dog and chased other stray dogs out of a neighborhood because they were causing sleepless nights for residents ("Police destroy 'homeless' dog", 1953). What makes the rabies virus fearsome is that "there is no effective curative treatment for rabies once clinical signs have appeared" (World Health Organization, n.d.) and the virus itself "makes a beeline for the nervous system, where it begins to modify the behavior of its host in order to facilitate its own transmission to other victims" (Weiser, 2015, p. 444). Although rabies is still a threat today, the likelihood of contracting the virus is rare.

According to the Centers for Disease Control (2020), only 1 to 3 cases of human rabies are reported annually with a total of 25 known cases between 2009 and 2018. Ma and colleagues (2020) only 63 (0.3%) of 22,418 dogs submitted for testing in 2018 were confirmed rabid. As for human contraction of the rabies virus, only 3 out of 23 cases reported were confirmed to have rabies in 2018 (Ma et al., 2020). The first was a 6-year-old male who contracted the virus from a bat, the second was a 69-year-old female who tested positive for the raccoon even

though no exposure to a raccoons was noted, and the third was a 55-year-old male who tested positive for the bat variant of rabies even though no bites were reported after he cleaned bats from his home (Ma et al., 2020).

Dogs exist in a state of nothingness (Dayan, 2011); dogs are alive but also dead. They live and have a life cycle, but they are property and therefore dead in law. Dogs, then, may best be understood through a zombie trope. Zombies are the personification of our own mortality (Bishop, 2006) thereby making “[z]ombies...the social-self undone” (Dayan, 2011, p. 22). Similar to the rabies virus, the zombie virus transforms its new host into something other than human (Moreman, 2010) and this transformation occurs from the contamination of the blood traditionally through a bite (Webb & Byrmand, 2008). Zombification refers to “the disoriented wanderings, the loss of speech, sense, and will, the perverted practices that erase all ties to kith and kin” (Comaroff & Comaroff, 2002, p. 798), and it is the transformation of something benign into something malignant. The dangerous dog construct operates in much the same way.

The removal of a canine’s agency and then its autonomy allows for the transference of traits between humans and canines. Other times, though, the transference is from canine to human; yet, even during these times, humans are the ones deciding which traits are transferred and how. Once the *dangerous dog* label has been applied, the next step is to tap into a human fear and link it to a natural trait possessed by the object to be condemned. This link is made between the human fear of being prey and the canine’s natural offensive and

defensive mechanism—its bite. Relying on the one drop rule to classify all dogs with similar physiological traits to that of a “pit bull” allows for the segregation of that dog from other breeds, as well as constructing the dog as biological and socially inferiority (Delise, 2007). This construction of pit bulls and other “aggressive breeds” overlooks the fact that it is humans who have bred and trained pit bulls and other breeds for aggression, and it is humans who continue to breed and train for these traits (Delise, 2007). The dangerous dog construct is a subtle reminder that the one-drop rule (i.e., contaminated blood) is still alive and infecting subsequent generations.

CHAPTER SIX

FINDINGS 2: THE FOURTH AMENDMENT LABYRINTH

Discussions of police violence mostly revolve around the incident itself (e.g., whether the individual was an immediate threat or if they were armed) or the subsequent lack of arrests, charges, and convictions of police officers following the killing of citizens by police. The target of the public's anger and frustration following the non-indictment or acquittal of officers involved in the killing of a citizen is the policing institution itself. This anger and frustration focus on the policies, the training, the possible inherent biases of the officers themselves, as well as the systemic racism upon which the institution of policing exists. Yet, an often-overlooked component of police violence is the Fourth Amendment. The Fourth Amendment, though, is the gateway to any excessive force claim (Taslitz, 2006). This prestige was bestowed upon the Fourth Amendment when the United States Supreme Court ruled that the amendment's objective reasonableness standard was the guiding framework for analyzing excessive force claims (*Graham v Connor*, 1989). As a result, any legal challenge to an officer's actions from their search and seizure of property to the intentional and unintentional shooting of humans or dogs must pass through this gateway. Getting through this gateway, though, is now easy task. Judicial decisions spanning the nation's existence, and even before its existence, have created a strong fortification out of the Fourth Amendment itself and a labyrinth of legal obstacles if one is able to make it through this proverbial gateway.

The purpose of this chapter is to demonstrate how the judiciary uses the Fourth Amendment to protect officers and obfuscate the existence of police violence. This chapter begins with a brief history of the Fourth Amendment so that the reader can understand how police violence came to reside within the framework of the amendment itself. The chapter will then move into a discussion of the various legal principles and practices that create the judicial labyrinth protecting officers.

The Fourth Amendment is deeply rooted within the belief that one has a right to exclude others from entry into their private spheres. This belief extends well back into America's British ancestry. In his pronouncement condemning the English government's search of John Wilke's home and seizure of his papers, Lord Camden stated:

No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil (Lord Camden's pronouncement as cited by *Boyd v United States*, 1886, p. 627).

The United States Supreme Court reiterated Lord Camden's belief centuries later when it declared that the "physical entry of the home is the chief evil against which the wording of the *Fourth Amendment* is directed" (*Payton v New York*, 1980, p. 585). Although this belief is warm and fuzzy on the surface, the amendment's origins and evolution have focused on narrowing those aspects of existence that are protected by the amendment by excluding various police practices that could trigger Fourth Amendment protections.

The Gateway

Even before stepping foot into the labyrinth that is the Fourth Amendment, one must first be deemed legally *worthy* of passage before the gates to the Fourth Amendment's labyrinth opens. This determination is made by deciding if the individual has standing, that is the legal right, to bring a suit against the individual officer(s) (Francione, 1995). Specifically, standing refers to one's "personal stake in the outcome of the controversy" (p. 204) that would have a direct and potentially adverse effect on that individual (*Baker v Carr*, 1962). From the outset, though, the notion of standing was used to limit who had an "inalienable right" to the guarantees and protections of the United States Constitution. For instance, Chief Justice Parker of the Massachusetts Supreme Court declared in 1823 that slaves were not included within the Constitution's refrain "We, the People," and are, therefore, not afforded any of its benefits (*Commonwealth v Griffith*, 1823). This denial of personhood was continued in the United States Supreme Court's decision in *Dred Scott v Sanford* (1857) which declared that slaves did not fall within the concepts of "people" or "citizen" and are therefore not benefactors of the Constitution's protections. This denial of personhood to slaves was erected on the belief that "property" has no rights (Taslitz, 2006). That is, the person may have a right to be free from government intrusion regarding their property, but the property itself, even sentient property, is devoid of any such rights. Injuries inflicted on slaves were considered harmful because they damaged the property of a white slave owner.

The judiciary follows this same line of reasoning when determining if the killing of a person's dog by police constitutes a seizure, and if so, if that seizure was reasonable. Yet, the Fourth Amendment's protections against excessive force apply only to the dog's owner and not to the dog who suffers the harm (*Powell v Johnson*, 2012). In *Nichols v Village of Minerva* (2016), a United States District Court in Ohio declared that a person "may not assert an excessive force claim on behalf a dog" (p. 12) because of the dog's status as property. Likewise, a federal district court in Illinois reiterated that a dog owner cannot bring an excessive force claim for their dog's death when it denied a dog owner's claim that witnessing the police killing of their dog constituted excessive force (*Taylor v City of Chicago*, 2010). According to the judiciary in *Taylor* (2010), there is no precedent for "allowing a person to maintain a vicarious constitutional claim for witnessing the alleged excessive use of force on another or an owner to maintain a constitutional claim for the use of force on his or her property" (p. 14). Standing, then, is an important component for enforcing one's rights (Francione, 1995); yet, as the above examples show, standing itself is a tool used by the judiciary to exclude people from participating in the judicial process. Even if one is fortunate enough to be granted inclusion under the Constitution's protections via standing, there are limits to how far the judiciary is willing to extend Fourth Amendment protections.

Over time, the Fourth Amendment jurisprudence has come to govern "interests in free movement, privacy, and property" (Taslitz, 2006, p.91). In *Brown*

v Battle Creek Police Department (2016), the Sixth Circuit partially justified the shooting of the Browns' dogs based on the dogs being *unrestrained* and *unsupervised* within the Browns' home. On the surface these words create a sense of danger for the safety of the officers. However, these words and the concepts they evoke are rooted in themselves rooted in slavery. One of the driving forces behind maintaining slavery and the belief of white mastery over black bodies was the ability to control the movement of slaves (Taslitz, 2006). A slave wondering freely was viewed as a threat to the social order of the South, and owners were viewed as recalcitrant for allowing such behavior to go unpunished. Controlling a slave's movement limited that individual's opportunities for establishing meaningful relationships that could become more important than the will of their owner which in turn may lead to resistance and even revolt against the established structure (Taslitz, 2006). Likewise, dogs running loose (i.e., without supervision) are deemed both dangerous and a failure of their owner to properly manage the dog (*Altman v City of High Point*, 2003; *Brown v Muhlenberg Twp*, 2001; *Fuller v Vines*, 1994). One of the ways that Southern Whites controlled the movement of slaves was with slave patrols (Brown, 2019). Slave patrols accomplished their mission of patrolling the countryside and entering slave quarters, which were located on their owner's private property, to search of runaway slaves or contraband (Parénti, 2001). Slave patrollers were even allowed to "discipline" slaves for any discovered or perceived infraction (Taslitz, 2006). This intrusion upon private property was viewed as governmental

overreach, especially regarding the damaging of their “property” (e.g., whipping of slaves). As such, an early version of qualified immunity was granted to those working slave patrollers. Scripted into service, patrollers were given papers indicating that they not only had authority to enter onto a slave owner’s land, but it also protected the patroller for litigation that might arise from “damaging” a slave (Taslitz, 2006).

The Sixth Circuit’s use of the terms *unrestrained* and *unsupervised* in *Brown* (2016) further connects the police violence committed against the Browns’ dogs with the violence that befell slaves through the use of geography. The slave owner’s home was protected against the arbitrary intrusions of slave patrollers while the slave’s own domicile, which was detached and situated away from the slave owner’s home, was fair game (Taslitz, 2006). Furthermore, much of the slaves’ social lives occurred in those areas beyond the slave owner’s reach such as woods, swamps, and buildings erected on the periphery (Camp, 2002). In modern Fourth Amendment jurisprudence, we see a similar approach to determining which portions of land are excluded from Fourth Amendment protections. The United States Supreme Court, however, declared that “the special protection accorded by the *Fourth Amendment* to the people in their ‘persons, houses, papers, and effects,’ is not extended to the open fields” (*Hester v United States*, 1924, p. 59; emphasis in original). An open field need be neither ‘open’ nor a ‘field’ as those terms are used in common speech” (*Oliver v United States*, 1984, p. 180; footnote 11). The curtilage on the other hand is that portion

of “land immediately surrounding and associated with the home” (p. 180), thus receiving full Fourth Amendment protection (*United States V Dunn*, 1987). Anything situated beyond the home’s curtilage is not covered by the Fourth Amendment’s prohibitions against warrantless searches because these areas are not associated with promoting that intimate activity that derives from “the sanctity of a man’s home and the privacies of life” (*Boyd v United States*, 1886, p. 630; see also *United States v Dunn*, 1987). The Sixth Circuit’s use of the terms *unrestrained* and *unsupervised*, then, not only denied the Browns any possessory interest in their dogs, but it temporarily transforms the interior of the Browns’ home—where the sanctity and privacy of life occurs—into an open field and beyond the reach of the Fourth Amendment.

An analysis of federal decisions addressing the killing of dog by police reveals that most canicide incidents occur on the dog’s owner’s property. In *Fuller v Vines* (1994), officers approached a front yard where they encountered the owner’s dog and subsequently shot the dog because the dog “charged them, barking, and growling” (p. 66); in *Kay v County of Cook* (2006), an officer, serving a summons, shot a dog as he entered an apartment on the grounds of a well-being check because no one answered when he knocked and the door was open; in *Perez v City of Placerville* (2006), the officer of a canine unit shot Ms. Perez’s dog in the fenced in backyard while searching for Ms. Perez’s boyfriend who the officers believed was residing at the residence; in *Esterson v Broward County Sheriff’s Department* (2010), a sheriff’s deputy—investigating a barking

dog complaint—was walking the “grassy area between two homes” (p. 2) toward the rear of the Esterson’s house when she shot the Esterson’s dog after it left the backyard patio and approached her in an “aggressive manner” (p. 2); in *Carroll v County of Monroe* (2013), police shot dog in its owner’s home during the execution of a no-knock warrant; in *Jones v Lopez* (2017), officers shot the Jones’ dog inside the Jones’ home after entering because the front door was open and no one answered when the officers knocked and announced their presence; in *Bullman v City of Detroit* (2018), police shot two dogs during the execution of a drug warrant; and in *Anderson v City of Chicago* (2018), shot a dog inside the owner’s home during the execution of a warrant for cocaine and other drug paraphernalia. These decisions and others like them transform dogs into threats to the social order even when they are on their own property.

For much of the nation’s history, dogs were considered a qualified form of property (Altman, 2003). In *Sentell* (1897), the Court affirmed the constitutionality of a Louisiana law requiring that all dog owners register their dogs on their local assessment rolls for purposes of taxation (*Sentell v. New Orleans & C.R. Co.*, 1897). The state’s intent in passing the legislation was to have the owner set the dog’s value and then tax that value. In its reasoning, the Court declared that dogs exist somewhere “between animals feroe naturoe in which until killed or subdued, there is no property, and domestic animals, in which the right of property is perfect and complete” (p. 701). Stating this differently, dogs exist in a space between two worlds. In one world, animals exist in a space that situates them

beyond the capability of humans to claim any possessory interest in the animal. In this space, humans cannot exert total control over the animal's body (i.e., the right of exclusion) until death ends any possessory interest the animal has in its own skin. As such, the animal is *wild*. In the other world, animals exist in a space that situates them directly under the control of humans, thus giving humans the capability of claiming a possessory interest in the animal while it is still alive. Animals in this second world are best understood as *living* stock since the animal's worth to humans is contingent on the animal's market value. What the Court was saying in its *Sentell* (1897) decision, then, was that a dog's body and its essence have no value in law until death alleviates the dog of any possessory interest in its skin (Dayan, 2011).

Embedding police violence into dogs as private property, however, involves more than the stroke of a pen. It entails a social ritual that transforms the dog's skin and body into something possessable by humans while the dog is alive. The challenge for the judiciary is devising a way to include dog owners under the full protection of the Fourth Amendment with the understanding that dogs do not fit into the categories of persons, houses, or papers (*Altman v City of High Point*, 2003). The only reasonable way that dog owners could be afforded any possessory interest in their dogs, according to the *Altman* (2003) decision, is to deem them as effects. As effects, dogs no longer exist on the periphery of capitalism as "qualified property" (p. 701) where "private interests require that the valuable ones shall be protected, [but] public interests demand that the worthless

shall be exterminated (*Sentell v New Orleans and Carrollton R. Co.*, 1897, p. 702). As personal property in the form of effects, dog owners now have full possessory interests in their dogs. This new status allows the judiciary to punish an individual by removing any possessory interests they have in their dog through exclusionary legal terms such as contraband—“When a person owns a dog that is unlicensed, in the eyes of the law it is no different than owning any other type of illegal property or contraband” (*Smith v City of Detroit*, 2017, p. 20). In *Pena v Village of Maywood* (2016), the judge denied the Penas any possessory interest protected by the Fourth Amendment because “if the Penas had followed the law rather than flout it and registered their pit bull, law enforcement might have had notice of the dangerous animal on the premises and acted differently” (p. 21). The ascension of dogs into the pantheon of private property brings with it the same police violence that is woven into the social relations underlying the judiciary’s decisions regarding privacy and private property in their more traditional forms.

The Fourth Amendment’s Minotaur

Patrolling the various pathways of this labyrinth is a nonmythical creation that is set loose to strike down anyone who dares challenge an officer’s actions. This ever-vigilant sentinel is qualified immunity. Qualified immunity is a judicially crafted legal concept that shields government officials from prosecution (Pfeifer, 2020; Institute for Justice, 2020). Specifically, it is a legal defense that protects government officials from tort claims arising from a government official’s actions

during the performance of their duties (Klockers, 1996; Institute for Justice, 2020). The goal of qualified immunity is to “avoid excessive disruption of government and permit the resolution of many insubstantial claims” (*Harlow v Fitzgerald*, 1982) by balancing “the rights of citizens [against] ‘the need to protect officials who are required to exercise their discretion’” (*Harlow v Fitzgerald*, 1982, p. 807). The logic behind qualified immunity is that government officials cannot always know the current state of the law and should therefore be afforded some leniency for actions that they may not know are a violation of law (*Saucier v Katz*, 2001; *Malley v Briggs*, 1986). Overcoming an officer’s invocation of qualified immunity requires the individual to demonstrate that the officer knowingly “[violated] clearly established statutory or constitutional rights of which a reasonable person would have known” (*Pearson v Callahan*, 2009, p. 231). That is, a right is clearly established according to the Court when a reasonable official knows beyond a doubt that their actions are violating said right (*Anderson v Creighton*, 1987). This stance regarding what constitutes a clearly established right has remained consistent over the decades (see *Reichle v Howards*, 2012; *Mullenix v Luna*, 2015). Determining if a right is clearly established requires a judge to begin with the “decisions of the United States Supreme Court, then to decisions of the United States Court of Appeals...and other courts within the circuit, and finally to the decisions of other circuit courts of appeal” (*Daugherty v Campbell*, 1991, p. 784). This line of progression narrows who has the authority to place an officer on notice that their behavior violates a clearly established

right. The judiciary can use this narrow list to justify the granting of qualified immunity regardless of how egregious an officer's actions.

In 2014, six minor children including a 10-year-old boy (identified in court records as SDC) were outside in SDC's yard along with an adult (Damion Stewart) when officers entered their property searching for Christopher Barnett who was unknown to the Corbitts or anyone in the yard. The officers chose to search the Corbitt yard because Christopher Barnett had "wandered into the area" (*Corbitt v Vickers*, 2019, p. 1308). The officers ordered everyone including the children to lay on the ground at gunpoint. Although everyone complied with the officers' demands and there was no immediate threat from the family's dog, "Bruce," Officer Vickers discharged his firearm at Bruce (*Corbitt v Vickers*, 2019). The shot missed and Bruce temporarily retreated to the safety of the home. When Bruce reappeared, Officer Vickers discharged his firearm again; missing the dog for a second time. However, the second shot struck SDC in the back of his right knee. At the time, "SDC was 'readily viewable' and resting 'approximately eighteen inches from...Vickers, lying on the ground, face down, pursuant to the orders of [Vickers]'" (*Corbitt v Vickers*, 2019, p. 1308). The Eleventh Circuit granted Officer Vickers qualified immunity because "Corbitt's *Fourth Amendment* claim is based on a governmental action not directed toward SDC and which only accidentally harmed SDC" (*Corbitt v Vickers*, 2019, p. 1319). Two implications arise from the Eleventh Circuit's decision

First, there decision denies that any *legal* harm exists because there is no prior case clearly establishing a citizen's right not to be accidentally shot by an officer who is trying to shoot a dog. That is, the right to be free from harm in general does not exist; rather, the judiciary or legislation must specifically establish the right to be free from a specific form of harm before it can legally exist. Just to clarify, the Eleventh Circuit is not saying that Officer Vickers—an adult with the ability of rational thought and who has been through firearms training—could not comprehend the possible danger from discharging his firearm at a moving dog when both the dog and a 10-year-old child are within 18-inches of himself. What the Eleventh Circuit is saying that there is no legal authority notifying Officer Vickers that such action violates a 10-year-old child's right not to be shot. Second, the Eleventh Circuit denied the existence of any *legal* harm because Officer Vickers' intention was not to specifically seize SDC by shooting him with his (Officer Vickers') firearm. Recall from *Graham* (1989) that an officer's intentions are not allowed to be calculated into the judiciary's decision when determining the reasonableness of the officer's actions. The Eleventh Circuit's decision in *Corbitt* (2019), although seemingly contradictory to *Graham* (1989), highlights an overlooked aspect of police violence. Namely, police violence is not always physical. The judiciary has held steadfastly to the belief that a "*Fourth Amendment* seizure requires 'an intentional acquisition of physical control' which occurs 'only when there is a governmental termination of freedom of movement *through means intentionally applied*' (*Maney v Garrison*, 2017, p.

218; emphasis in original). That is, an officer must willfully and knowingly intend to impede a person's voluntary movements with the exact methods that impeded the person's movements before the protections afforded by the Fourth Amendment can even be considered (*Brower v Inyo County*, 1989). Therefore, a "seizure must occur before an excessive force claim is cognizable under the Fourth Amendment" (*Dunigan v Noble*, 2004, p. 492).

In *Corbitt* (2019), the Eleventh Circuit believed that Officer Vickers had seized SDC prior to the shooting because he intended to take SDC and the others under his control by ordering them all on the ground. Had the Eleventh Circuit in *Corbitt* (2019) believed that Officer Vickers had not intended to use his firearm to impede SDC's right to move about freely, then a seizure would not have occurred, and an excessive force claim could not have been brought against Officer Vickers. Although the finding that SDC had been seized should open the way for a determination on the reasonableness of Officer Vickers' actions, the judiciary will find ways of obfuscating police violence (Duane, 2016; Ristroph, 2017). Relying on *Brower v County of Inyo* (1989), the Eleventh Circuit likened the accidental shooting of SDC to someone being pinned by an unoccupied police car that slipped its brake. In *Brower* (1989), the United States Supreme Court declared that "if a parked and unoccupied police car slips its brake and pins a passerby against a wall, it is likely that a tort has occurred, but not a violation of the *Fourth Amendment*" (*Brower v County of Inyo*, 1989, p. 598; emphasis in original). That is, the officer in the hypothetical car scenario did not

intend to use the car to seize the person; therefore, the officer has not committed a Fourth Amendment violation or even used excessive force regardless of the harm done to the person pinned by the car. The Eleventh Circuit's likening Officer Vickers unintentional shooting of SDC to a car pinning someone against a wall removes Officer Vickers' autonomy and transforms him into an automaton that cannot be held liable for actions. As such, the officer is not acting on their own volition; they are executing their programming (i.e., training) and just following orders (Duane, 2016). According to the Eleventh Circuit, Officer Vickers is deserving of qualified immunity because "[an] accidental shooting, as occurred here, does not constitute a clearly established *Fourth Amendment* violation as a matter of obvious clarity" (*Corbitt v Vickers*, 2019, p. 1320; emphasis in original).

Likewise, the Ninth Circuit declared in *Fuller v Vines* (1994) that an officer pointing a gun at individual who was a "considerable distance" (p. 67) constituted excessive force, and this decision was reaffirmed 6 years later in *Robinson v Solano County* (2000) when the Ninth Circuit again denied qualified immunity to officers for pointing their weapons at an unarmed individual whom the officers watched walk 135 feet from his home to their position in the street. As a result of the U.S. Supreme Court's ruling in *Saucier v Katz* (2001), though, the Ninth Circuit had to reverse its ruling in *Robinson* (2000). The Ninth Circuit's reversal of their decision 2 years prior was based in part on the requirement that they decided the case based on if the right not to have a firearm pointed at oneself was clearly established when the incident occurred (*Robinson v Solano County*,

2002). This requirement led to the Ninth Circuit granting qualified immunity to the officer because there was no controlling precedent in 1995 putting the officer on notice that their actions were a violation of law (*Robinson v Solano County*, 2002). Seven years later, the Ninth Circuit once again granted qualified immunity to an officer even though the officer aimed his gun at an individual who was “cooperative, unarmed, and outnumbered two to one” (p. 218) by the police (*Burke v County of Alameda*, 2009).

This deferment to protecting government agents precedes the nation’s founding. Section 46 of the Sugar Act of 1764 protected customs officers from liability for seizing a shipping vessel “even when a shipowner [later] proved his innocence and suffered ruinous damages” (p. 48) so long as the customs officer had probable cause to believe the shipowner was in violation of the law; this immunity could also be applied retroactively by the judiciary (Taslitz, 2006). Although qualified immunity originated as a protection for government officials against liability from exercising their discretion while carrying out their duties. However, qualified immunity has become an almost impenetrable fortress protecting the officer not only from any liability arising from their actions, but also from any criticism of their action (*Ziglar v Abbasi*, 2017; Justice Thomas concurring in part). As such, many have begun calling for the abolishment of qualified immunity (Weiss, 2020). The abolishment of qualified immunity, however, may not have the effect that abolitionists desire.

The Labyrinth

Traversing this labyrinth is a perilous journey filled with a variety of pitfalls and dead ends. Even a proven pathway toward the goal of overcoming qualified immunity may suddenly transform into a dead end through the judicial practice of distinguishing cases. The purpose of distinguishing a case is to highlight facts within the case that demonstrate how the case is fundamentally different (i.e., distinguishable) from a previous decision thereby excluding the case from the binding authority of judicial precedent. Distinguishing cases usually occurs because there exists precedent which would lead to an adverse outcome for the challenging party. Regarding the pointing of a firearm by police at an unarmed individual, the presence of an unleashed pit bull standing next to Mr. Burke altered the case enough for the Ninth Circuit to deviate from their decision in *Burke* (2009): “We have no cases discussing the use of force where an unarmed suspect is standing next to an *unleashed and potentially aggressive dog*” (*Burke v County of Alameda*, 2009, p. 219; emphasis added). At no point throughout the Ninth Circuit’s reasoning, however, does the court describe any behaviors of the dog that would suggest aggression. Even the Sixth Circuit in *Brown v Battle Creek Police Department* (2016) relied on the dangerous dog construct and the dogs being unleashed in an “unsupervised environment” (p. 572)—the unsupervised environment was the inside of the Browns’ home—to grant qualified immunity to the officers who shot and killed the dogs. Likewise, a dog being unrestrained was enough for a United States District Court in to deem

Officer Driggett's actions reasonable (*Bateman v Driggett*, 2012). The judiciary's focus on the dog being unleashed is used to enhance the dog's potential dangerousness and create a visual image that the officer is in a "tense, uncertain, and rapidly evolving" (*Graham v Connor*, 1989, p. 397) situation.

In *Hells Angels* (2005), the Ninth Circuit denied qualified immunity to officers of the San Jose Police Department who shot and killed the dogs of two Hells Angels members during raids at their separate residences. Qualified immunity was denied because both raid teams had approximately one week to plan the raids and both teams knew that they would have to contend with dogs on the property when the raids occurred. This knowledge of the dogs' presence prior to the execution of the raids coupled with the time they had to plan the raid afforded the police enough time to develop less lethal strategies for dealing with the dogs (*Hells Angels*, 2005). Furthermore, the officers' desire to maintain the element of surprise was extinguished with the first shot from the officers' weapons (*Hells Angels*, 2005). The Ninth Circuit's decision in *Hells Angels* (2005) clearly established that individuals have a possessory right in their dogs and that the shooting of someone's dog(s) is unreasonable if the police have ample time to prepare for the dog's presence. The judiciary, however, routinely circumvents this decision and others like by arguing that the case immediately before them is fundamentally different from the events that led to the Ninth Circuit's decision in *Hells Angels*, as well as other federal decisions that have found an officer's actions excessive (i.e., unreasonable).

In *Brown v Battle Creek Police Department* (2016), the officers meet before the raid to discuss how the warrant would be executed. During this discussion, the police discussed “whether there were children or dogs present at the residence” (p. 561) along with other factors such as Jones’ criminal history and known criminal affiliations (*Brown v Battle Creek Police Dept.*, 2016). Although the Sixth Circuit does not detail how much time spanned the officers meeting to discuss the raid and the moment of the warrant being executed, they believed that “the officers had no meaningful time to formulate a plan on how to deal with the dog” (p. 570) because the officers were informed of the dog’s presence while on their way to the residence (*Brown v Battle Creek Police Dept.*, 2016). The Sixth Circuit reinforces their belief through by using the words “meaningful time” to describe the amount of time the officers between notice of the dog’s presence and arriving at the Browns’ home. The use of these words allows the Sixth Circuit to imply that there exists a specific amount of time that would have made the shooting of the Browns’ dogs unreasonable without having to explicitly quantify this amount. In *Thurston v City of North Las Vegas Police Department* (2014) the majority reversed a lower court’s granting of qualified immunity because the officers shot the homeowners’ dogs 20 minutes after executing the search when there was no clear indication that the dogs were behaving aggressively. In *Bateman v Driggett* (2012), a U.S. District Court noted that Officer Driggett was on Bateman’s “porch less than a minute when he observed [Bateman’s] pit bull get up and run out of the garage” at him (p. 4) and

that the officer was at the home “only 17 minutes from arrival to departure” (p. 22). Also in *Bateman v Driggett* (2012), the district court relied on Driggett’s lack of familiarity with Bateman’s property and his failure to see a sign indicating that a dog was on the premises as justifications for finding the killing of Bateman’s dog as reasonable (*Bateman v Driggett*, 2012; see also, *Thurston v City of North Las Vegas Police Dept.*, 2014; *Smith v City of Detroit*, 2017). Even if a court finds that a right is clearly established and that an officer violated one’s right, this alone may not be enough to deny an officer qualified immunity.

Rule 52 of the Federal Rules of Criminal Procedure (2017) states, “[a]ny error, defect, irregularity, or variance that does not affect substantial rights must be disregarded” (p. 64) and is referred to as a “harmless error.” One of the functions of the harmless error rule is “conserving scarce judicial resources by avoiding pointless retrials” (*United States v Roy*, 2017, p. 1142). Overturning a conviction based on an error believed to lead to abuses of the judicial process by litigants and ridicule from the public (*Del v Van Arsdall*, 1986). Furthermore, constitutional errors have been deemed harmless (*Arizona v Fulminante*, 1991), so long as their effects would not have changed the outcome of the trial (*Weaver v Massachusetts*, 2017). In *United States v Roy* (2017), the Eleventh Circuit affirmed the conviction of a defendant even though his lawyer was absent from the courtroom for seven minutes because the error was harmless since it did not occur at a “critical stage” in the trial. Even though the information disclosed during the absence of the defendant’s lawyer was later repeated in court, the

Eleventh Circuit's decision essentially deems certain parts of a trial as less important than others with the use of the phrase critical stage. In *P.M. v Bolinger* (2011), a S.W.A.T. team raided a home based on information from a "trash pull" (p. 3)—the search of an individual's trash for evidence of a crime—of the Whitworth's home. The raid resulted in the death of one dog, the injury of another dog, and a child having a weapon pointed at them. Among the various issues for which the Whitworths sued was intentional infliction of emotional damage. The federal district court declared that the Whitworths failed to demonstrate that the sole intention of Officer Bolinger was to cause the Whitworths emotional distress and that Officer Bolinger was therefore entitled to summary judgement. According to the federal district court, Officer Bolinger and the other officers would have still been afforded summary judgement "even assuming the police officers...intended to cause emotional distress to the Whitworths" (pp. 23-24) because each of the contested actions had a legitimate policing purpose of enhancing officer safety (*P.M. v Bolinger*, 2011).

Another method used by the judiciary to obscure the pathway to justice is to establish different frameworks for analyzing similar behaviors. One framework governs government agents while the other framework governs non-government agents. The United States Supreme Court declared many years ago that a person may be "convicted and imprisoned for committing a crime even if you had no criminal intent and absolutely no knowledge that your conduct was forbidden by any law" (Duane, 2016, p. 15). Yet, an officer may still benefit from qualified

immunity even if it is shown that the officer violated a clearly established constitutional right so long as the harm was a mistake of law, a mistake of fact, or both (*Pearson v Callahan*, 2009). That is, a person is still liable for their actions even though they did not know their actions were a violation of law (New Jersey State Bar Association, 2018) while the police are protected by what they do not know. The application of these different frameworks applies to evidence that could be condemning or exculpatory to a defendant.

The law of hearsay prevents an officer from divulging information they received from witnesses including statements made by the defendant if this information benefits the defendant (Duane, 2016). However, the law of hearsay does not prevent an officer from divulging these same statements if, under questioning by a prosecutor, the statements are used to demonstrate the defendant's guilt (Duane, 2016). As with witness testimony in court, the emotional attachment between a human and dog becomes vital when it is seen as beneficial to the criminal justice system. In *Pettit v New Jersey* (2011), a United States District Court upheld a pat-down of a dog owner who reentered his home and then came back out after realizing the officer shot his dog. Specifically, the district court relies on the dog owner's statement immediately following the shooting— "why the fuck did you shoot my dog"—as grounds for the officer to fear for his safety. A consequence of this practice is that judiciary can exclude the emotional bond between a dog and their owner when determining the reasonableness of an officer's actions while simultaneously believing that an

officer “does not act unreasonably in shooting [a] dog in order to protect himself and his canine companion” (*Warboys v Proulx*, 2004, pp. 117-118). Although these differing decisions appear at odds with each other, they actually bond together much like the different polar ends of magnets.

The Exclusionary Fourth Amendment

The Fourth Amendment is comprised of two clauses, the search and seizure clause and the warrant clause (*Carpenter v United*, 2018; see also *Mapp v Ohio*, 1961, Justice Black concurring). For purposes of this chapter, the governing clause is the search and seizure which states that the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” (U.S. Const. amend. IV). Although this clause is constructed from 19 words, it is only a few words within in this clause that provide the judiciary with the justifications needed to exclude someone from Fourth Amendment protections. First, the rights enumerated in the clause are given to the “people” instead of the individual. Giving these rights to the People opens the pathway to fostering a sense of community and the ability to keep a check on the state by monitoring the actions of its agents (Tasllitz, 2006). However, the judiciary has used the concept of peoplehood, although not explicitly since slavery, to determine what degree an individual is protected by the Fourth Amendment.

In 1977, the United States Supreme Court reiterated the state’s right to stop people at the border and search their persons and property without much

interference from the Fourth Amendment because the encounter takes place at the border (*United States v Ramsey*, 1977). This longstanding concern by the judiciary for protecting the border's integrity reconfigures the concept of reasonableness in such a way that it takes on a different form at the border compared to the interior (*United States v Molina-Gómez*, 2015). "The Government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border" (*United States v Flores-Montano*, 2004, p. 152). Constitutional protections increase as one moves further into the interior of the nation (*United States v Montoya de Hernandez*, 1985). One notion put forward by these decisions is that one becomes more assimilated into the nation's peoplehood the further one moves into the interior of the nation. Yet, as we have seen, the judiciary has developed a well-oiled machine of legal concepts to strip away said personhood. Similarly, the Fourth Circuit declared that "when a dog leaves the control of his owner and runs at large in a public space, the government interest in controlling the animal...waxes dramatically, while the private interest correspondingly wanes" (*Altman v City of High Point*, 2003, p. 205). That is to say, the government's authority to regulate (e.g., seize and-or kill) the dog as it sees fit increases exponentially as the dog moves closer and then beyond the property's borders.

Through a non-canicide lens, the home and the surrounding property are metaphors for the nation and its borders. As was shown with the judiciary's construction of an open field, concepts and words are not bound to their common

usage. The *border*, then, may be that area at the edges of a municipality's or nation's jurisdiction, or it may be the very inner cities of the nation that are saturated with police presence, or your own home. As such, this *border* is constructed as full of danger with those beings living beyond its edges constructed as a threat to the established social order if not properly monitored. As Grossman and Christensen (2012) state when defining their conceptualization of the sheepdog, "He is always sniffing around out on the perimeter, checking the breeze, barking at things that go bump in the night, and yearning for a righteous battle" (Kindle Locations 4297-4298). The police, like a colonizing army, enter onto the land and assert their dominance over the land's current occupants. Viewing police violence in this manner shows us that the dog who is resistant to the officer's presence isn't aggressive, it's defensive. The dog is truly a sheepdog in that it is using its capacity for violence to protect its fellow *citizens* from what it perceives as a threat to their safety—the officer. Yet, the police are not allowed to be perceived as threats in our society regardless of species. Therefore, the dog is transformed into something that jeopardizes the current social order and the officer is transformed into a *warrior* defending their fellow citizens from an unrelenting horde. The violence perpetrated against the dog is likewise transformed. It is no longer a reprehensible act, but it is now a righteous display of love for the officer's fellow citizen (Grossman & Christensen, 2012). This transformation of violence directs our attention to another aspect of the Fourth

Amendment—searches and seizures by their very nature are intrusive ordeals that require some degree of force to accomplish.

The search and seizure clause empowers the state with the authority to use violence against its own populace so long as that violence is not “unreasonable” (Taslitz, 2006). What constitutes a reasonable application of violence, though, is not clearly defined by the judiciary. This ambiguity is supposed to allow the judiciary to decide each case on their merits instead of an arbitrary and rigid standard (*United v Sharpe*, 1985). However, this ambiguity has resulted in the creation of an everchanging labyrinth of legal barriers that allow the judiciary to avoid addressing the issue of police violence. One way the judiciary avoids addressing the issue of police violence is by transforming police violence from a violent act and into a constitutionally accepted practice (Ristroph, 2017). The judiciary has held steadfastly to the belief that “[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates a prisoner’s constitutional rights” (*Johnson v Glick*, 1973, p. 1033). Although the *Johnson* (1973) decision addresses violence against prisoners, recall that the judiciary has held that there is no constitutional violation when “an officer shoots at a dog—or any other object—and accidentally hits the person” (*Corbitt v Vickers*, 2019, p. 1318). A federal appellate court for the First Circuit used the decision to affirm a state supreme court’s decision granting summary judgement to an officer who shoved and yelled at a pedestrian for asking the officer street directions (*Cummings v McIntire*, 2001). The First Circuit

believed that classifying the officer's action in *Cummings* (2001) as a constitutional violation would "lower the very high threshold for constitutional wrongdoing" (p. 347) even though the First Circuit believed the officer's behavior was worthy of condemnation regardless of stress level. Yet, the threshold for convicting a non-law enforcement individual for assaults against the police is barely higher than a doorstep.

Federal statute 18 U.S. Code §111 permits the federal government to incarcerate someone for up to a year if that individual "forcibly assaults, resists, opposes, impedes, intimidates, or interferes" with any federal official while performing their official duties. The penalty increases to 8 years if "such acts involve physical contact with the victim of that assault or the intent to commit another felony" and 20 years if a "deadly or dangerous weapon" is involved (18 U.S. Code §111). A required element for convicting someone of violating 18 U.S.C. 111 according to section 1565 of the Department of Justice's Archives (2020) is the use of force by that individual. However, neither the 18 U.S.C. §111 nor section 1565 of the resource manual defines the term "force." Therefore, every push or shove by a non-law enforcement individual may result in a prison term of 1 to 20 years depending on the circumstances surrounding the encounter. Furthermore, "a threat uttered with the apparent present ability to execute it, or with menacing gestures, or in hostile company or threatening surroundings, may, in the proper case, be considered sufficient force for a violation of 18 U.S.C. § 111," and this broad definition of force applies to the

other proscribed behaviors in 18 U.S.C. §111 as well (Department of Justice Archives, 2020).

What this law demonstrates is that the justifications for police violence are already considered and codified into law. This law and many like it take a common theme in many use of force policies across the nation—“ the principle that disobedience is not to be tolerated, and force is the logical result of any resistance” (Ristroph, 2017, p. 1213)—and give it legal weight. Resistance, even perceived resistance, requires a degree of force (e.g., pulling away from the police during an arrest or pushing against the police to stand one’s ground at a protest) to accomplish the feat. What this law also does is provide the police with the justification for using violence even when there is no force in any degree coming from the individual. The inclusion of the word “opposes” allows the officer to use force even if the individual does not actually resist. Noncooperation with an officer, or even the mere suspicion of noncooperation, is given the same weight as actively resisting or attempting to harm the officer (Ristroph, 2017). Viewing noncooperation as equal to actively harming an officer provides the officer with the necessary legal justification to use force even if the degree of force is disproportional to the degree with which the individual is resisting or opposing the officer. This stance allows the judiciary to declare that an officer shoving and yelling at a pedestrian for asking the officer street directions does not violate the individual’s Fourth Amendment rights (*Cummings v McIntire*, 2001). Laws like 18 U.S. Code §111 culls the individual from the masses and

from peoplehood. At one time, there was a recognition and acceptance with the United States that a person had the right, if not the duty, to resist unlawful arrests (Ristroph, 2017). Criminalizing resistance and opposition deny the individual their humanity and thereby their personhood which excludes them from receiving the benefits of peoplehood. Denying someone their personhood, and by extension their peoplehood, the body becomes *property* that is possessable by other humans (Dayan, 2011). Viewing the search and seizure clause through a canicide lens also directs our attention to the relationship between peoplehood and personhood.

The people's right to be secure in their person, along with the other components of the Fourth Amendment, is how the judiciary constructs the legal concept of privacy. Although the idea of privacy is founded on the belief that certain aspects of human existence fall outside the reach of the state's policing powers, the judiciary has limited the scope of this belief. First, a person must establish that they have an expectation of privacy over the object of the search or seizure (*Katz v United States*, 1967). Establishing this expectation is accomplished by creating sufficient indications (e.g., walls, fences, locks, personal relationships, etc.) that this expectation exists. That is to say, the person has put the People on notice that they are excluded from this aspect of the person's life. Second, the People must be willing to accept the person's belief that they have a right to exclude the People from intruding into their lives. Stating this differently, the existence of privacy at the individual level is contingent on

society's willingness to accept that this expectation exists (*Katz v United States*, 1967) and accommodates it. For instance, society is willing to accept an expectation of privacy over one's unclothed body (*Beard v Whitmore Lake Sch. Dist.*, 2005; *Brannum v Overton County School Board*, 2008), but not when someone is engaging in illegal activity regardless of the steps they have taken to exclude the People's gaze (*Oliver v United States*, 1984). The ability to deny someone their expectation of privacy derives from the Court's declaration that the protections of the Fourth Amendment are invested in "people, not places" (*Katz v United States*, 1967, p. 351). In other words, privacy is not confined to an actual geographical location. Instead it is embedded within the social relations that exist between individuals, and that connect the person to the people. It is these social relations that the judiciary uses to deny Fourth Amendment protections to the relationship between humans and dogs.

In *Brown v Muhlenberg Township* (2001), the Third Circuit found reasoned that the officer who shot the Brown's 3-year-old Rottweiler acted in a manner intending to cause emotional distress. According to the Third Circuit in *Brown* (2001), "[g]iven...the substantial emotional investment that pet owners frequently make in their pets, we would not expect the Supreme Court of Pennsylvania to rule out all liability predicated on the killing of a pet" (*Brown v Muhlenberg Twp.*, 2001, p. 218). A United States District Court in Massachusetts declared that an officer acted reasonably when he shot and killed the plaintiff's dog (*Sneade v Rojas*, 2014). According to the court in *Sneade* (2014), "the loss of a pet is very

traumatic and emotional” (p. 26). However, “there is no evidence in the record to support a finding that any Plaintiff suffered the severe emotional distress (such that no reasonable person could be expected to endure it) sufficient to make out a claim” (*Sneade v Rojas*, 2014, p. 26). The Second Circuit in *Carroll v County of Monroe* (2013) likewise recognized this emotional attachment between a dog owner and their dog when it stated that “[t]here is no dispute that [the deputy’s] shooting of the plaintiff’s dog was a severe intrusion given the emotional attachment between a dog and an owner” (p. 651). Like the Court in *Sneade* (2014) though, the Second Circuit denied that the deputy’s actions were unreasonable. A federal district court in Florida followed the Second Circuit’s decision in *Carroll* (2013) when it upheld the shooting of a dog by an officer based on the fact that officer safety outweighs the severe governmental intrusion of shooting one’s dog (*Shutt v Lewis*, 2014).

Putting these decisions into their proper context, the American Veterinary Medical Association (AVMA) (n.d.) estimated that in 2012 there were approximately 43.3 million of American households (36.5%) with at least one dog and 36.1 million (30.4%) of households at least one cat. On average, each household with a dog spent \$378 USD on veterinary care (AVMA, n.d.) which equates to approximately \$16.4 billion USD. The National Retail Federation³ estimates that Americans spent approximately \$440 million USD on Halloween costumes for their pets in 2017, an increase of 5 percent from the \$420 million

³ The nation’s largest retail trade association (National Retail Federation, 2018)

USD spent in 2016 (Stevens, 2017). A little over three weeks later, 24.06 million people watched the 91st annual Macy's Thanksgiving Day Parade (Porter, 2018) with approximately 20 million tuning into the 16th annual National Dog Show which aired immediately after the parade (Ingram, 2017). At year's end, Americans had spent \$69.51 billion USD on their pets in 2017, up from \$60.28 billion USD in 2015 (American Pet Products Association, 2017). For 2015, it was revealed that approximately 95 percent of Americans bought their pets a present for Christmas, 61 percent purchased gifts for their pet's birthday, and another 11 percent gave their pets a Valentine's Day gift (New York Daily News, 2015). Furthermore, many women find it difficult, or outright refrain from, leaving an abusive relationship because many safe locations are not equipped to allow the victim's companion animal to accompany them to safety. Seeking safety means leaving a companion animal to the whims and mercy of the victim's abuser (Ascione, Weber, Thompson, Heath, Maruyama, & Hayashi, 2007; Flynn, 2000a; Flynn, 2000b). Faver and Strand (2003) found that 26.8 percent of their participants delayed leaving out of concern for the welfare of their companion animal.

One survivor of abuse stated that her abusive husband "would sometimes do to Boomer [the family dog] what he wished he could do to us" (Flynn, 2000b, p. 110). Another survivor recounted an incident when her dog tried protecting her from abuse only to be hanged by the abuser with a clothesline; she saved her dog's life by "cutting her down" (Flynn, 2000b). Take a moment to reflect on

weight of the victim's actions. She was in a dangerous situation and her dog chose to protect her based on the relationship they had formed between them. During this violent encounter, the abuser physically takes hold of the dog who is resisting the abuser's authority, wraps a clothesline around the dog's neck who is most likely struggling to break free, and then hoists the dog into the air. It is not beyond the scope of this information to infer that the victim, most likely, watched as this scene unfolded. Furthermore, the dog is probably yelping and struggling as it is being lynched; again, while the victim is most likely watching. Then, instead of saving herself by fleeing the location, she locates a sharp object and cuts the clothesline to save her companion. In these incidents, the target of the abuser's torture is not the dog itself; rather, it is the underlying social relationship that connects the dog to the survivor. Therefore, attacks on the survivor's companion animal is another method by which the abuser attempts to strip the survivor of their personhood (Adams, 2010).

When humans are deprived of social interaction, their personhood is annihilated leaving only an outer shell (Dayan, 2011). The individual no longer recognizes themselves (Dayan, 2011) which makes them, and the masses, more manageable (Foucault, 1995). The Fourth Amendment is touted as one of the People's protection against arbitrary governmental intrusion into one's personal life (Taslitz, 2006). Yet, canicide shows that the judiciary constantly carves out spaces in the Fourth Amendment thus providing the state with footholds for executing its policing powers. This chapter has demonstrated how judiciary uses

case law and legal principles to create an everchanging labyrinth that provides its Minotaur with the avenues to pursue its quarry. So far, though, this chapter has not shown how the Minotaur kills its prey. A canicide lens provides this insight.

The Goring

The judiciary uses a variety of methods for constructing and framing police violence against dogs; however, the most effective is the perpetuation of the Thin Blue Line. Just as anthropocentrism situates humans as the most important beings and androcentrism situates males as the dominate gender, the Thin Blue Line situates the police as the “natural” group in any police-citizen encounter. Just as anthropocentrism situates humans as the most important beings and androcentrism situates males as the dominate gender, the Thin Blue Line situates the police as the “natural” group in any police-citizen encounter. The centerpiece of the thin blue line is officer safety which maintains and promotes the legitimacy of the state to govern behavior. Maintaining the system of violence underlying all police encounters requires the creation of a narrative that situates the society as constantly under attack from internal and external threats with the continuation of civilized society resting in the hands of a “chosen few” who put the safety of others above their own. This is the ideology underlying the term “the thin blue line” (Ristroph, 2017). The term “Thin Blue Line” was first used by a prosecutor in 1976 at the trial of a man accused of killing a Dallas police officer. As it was then, the term is used to champion the idea that the only thing standing between civilized society and complete hell on Earth is police. However,

constructing the police as sole entity holding the “wall” also situates the police and the criminal justice system as outside American society. Finally, the term is oftentimes invoked after a tragedy to highlight officer vulnerability and move any critiques from the officer’s possible use of force. In these incidents, the officer is the physical manifestation of both the society’s social control mechanism and the society itself. Officers are always viewed as a deserving victim and anything or anyone that jeopardizes an officer’s safety becomes a *deserving* recipient of the police’s full power (Klinger, 1997). Therefore, an attack on the officer is perceived as a personal attack and an attack on the society. Canicide highlights how the judiciary relies on the ideology of the thin blue line to justify police violence.

First, the term “police violence” does not exist within the vocabulary of the thin blue line. Force is either reasonable or unreasonable; it may even be excessive and unlawful (Hells Angels, 2003), but it is never *violent*. In *Bush v County of San Diego* (2016), the judiciary used the term violence in relation to an officer’s actions; however, it was not in condemnation of the officer’s actions but in summarization of the Bane Act. The United States District Court concluded that the officer in *Bush* (2016) did not violate the Bane Act when he shot the dog because he did not use “*threats, intimidation, or coercion upon Plaintiffs to effect the seizure*” of the dog (p. 18). Furthermore, the federal district court did not use the term violence or any derivative of the word when it justified the officer pointing their firearm at the individual was a display of their authority over the

individual which constituted a seizure (*Bush v County of San Diego*, 2016). The thin blue line also affects how the judiciary determines the constitutional protections afforded to an individual. The pattern followed by most judicial decisions begins with a review of the case's background. It is here that the judiciary makes its initial foray into justifying police violence by presenting the background from the officer's perspective. Any contestation of the official narrative is usually presented as an aside. As mentioned in another chapter, the ordering of words and paragraphs direct the reader to perceive the words and phrases read first as more important (Machin & Mayr, 2013). Placing the officer's version of events first leads the reader to put more weight to their version than to any alternative version provided by the plaintiffs. The next step in this formulaic approach is to either establishing the legal authority to hear and decide the case, establishing the appropriate legal framework for issues such as qualified immunity or summary judgment, or moving into a discussion of the issue. Whenever a court begins discussing the issue of an officer shooting a dog, the discussion focuses on determining the property status of the dog for purposes of the Fourth Amendment. The dog's sentience is removed for purposes of the judiciary's inquiry and its body is reduced to property.

CHAPTER SEVEN

CONCLUSION

Dogs have saturated American life from its founding (Grier, 2006). George Washington's Mount Vernon estate was well populated with dogs, both pure bred and mixed bred (Grier, 2006). Thomas Jefferson brought 3 French dogs with him along with his family and his slaves James Hemings and Sally Hemings when he returned to America in 1789 (Monticello, n.d.). Even today, Americans are obsessed with the dogs of the famous and powerful from Paris Hilton's chihuahua to President Biden's dog Champ and Major, even President Trump's lack of a canine companion was deemed newsworthy since he was the first president in a century to not have a dog at the White House (Farzan, 2019). Furthermore, dogs, and other companion animals, are such a vital part of society that local governments classified the estimated 3,500 brick-and-mortar animal shelters in the United States and 10,000 or so animal sanctuaries and rescue groups operating in North America as essential during the 2020 Covid-19 pandemic so that access to these services would not be denied (Humane Society of the United States, 2021a; Humane Society of the United States, 2021b). Likewise, the United States Department of Justice has a section within their organization that focuses on enforcing federal laws "that provide for the humane treatment of captive, farmed, and companion animals across the United States" (United States Department of Justice, n.d.). Couple these findings with the growing population of individuals who have begun viewing companion dogs as

equal to that of humans (Nast, 2006) and it becomes clear that dogs are an integral part of the functioning and reproduction of society in that they are functionaries of American society themselves. As functionaries of society, dogs, and other companion animals, are also an integral aspect in the construction of social solidarity.

Social solidarity is “preeminently a social fact, [and] is dependent upon our individual organism. In order to be capable of existing it must fit our physical and psychological constitution” (Durkheim, 2014, p. 54). That is, the desire to voluntarily substitute our individual identities for that of the larger collective must be engrained within our minds and bodies. This assimilation of oneself into the larger collective creates a solidarity *sui generis* which links the individual to society by linking those issues common throughout a society with those issues important to ourselves. However, the collective identity of this symbiotic is the wellspring from which the governmental authority draws its power, and this authoritative structure’s “first and main function is to create respect for [the society’s] collective beliefs, traditions and practices” (p. 42) thereby making the governmental authority the symbol of the collective and providing it with the ability to exercise power over the individual. A similar process occurs within wild dog packs.

Prior to the domestication of dogs, and for those canines falling into the classification of “wild,” social organization developed around the dog’s diet and reproduction preferences; however, the social organizational development of

certain wild dogs (e.g., wolves) is based on their preference for pack living (Dunbar, 1979). For these wild dogs, pack living is advantageous because it provides a stable food supply through an increased likelihood of a successful hunt and the ability to bring down larger game, as well as providing stability in the mating process, increased defense through having more members, and the ability to share the responsibility of caring for offspring (Dunbar, 1979). A popular misconception is that wild dogs form their social organizations on a dominance hierarchy; yet, this belief is not entirely accurate (Landsberg & Denenberg, 2014). The hierarchies found within wild dog societies are primarily used for dispute resolution when disagreements arise within the pack (Dunbar, 1979). The enforcement of the pack's hierarchy may be viewed as a formal means of reinforcing the pack's traditions and practices, as well as the pack's social solidarity.

Regarding human societies, reinforcing the traditions and practices of a society requires the governing authority to hold a monopoly on the use of violence as a counter measure to any resistance to the governing authority's power (Bittner, 1967). Although physical in nature, the target of the violence used by the governing authority via approved social positions (e.g., the police officer) is the individual's mind (Foucault, 1995). Focusing on the individual's mind transforms the person from a recipient of state power to a conduit of state power Foucault's (1995). Referred to as the "disciplines," this transformational process creates "subjected and practised bodies, 'docile' bodies" (p. 138). As such, the

purpose of the law in American society is to regulate the interaction between members of the society which it does by reinforcing the underlying social facts that govern the society.

Social facts are latent forces that provide the framework for how one is supposed to act in a society, and these latent forces are applying constant pressure on the individual to conform (Durkheim, 1994). What Durkheim is referring to is the unseen processes that shape how we view our social realities through various interconnected concepts. For instance, someone might feel obligated to justify why they are a “good” husband, wife, brother, or friend when their behavior does not follow the script set forth by the society in which they live. In this instance, a social fact is operating through both the concept of “good” and that desire to justify or explain oneself. Furthermore, social facts are reinforced formally through laws as well as informally such as being laughed at, ostracized, or reprimanded by a loved one (Durkheim, 1994). The informal reinforcement of social facts appears to operate much the same way as a dog’s barking or whining which are used to achieve a desired outcome (e.g., being feed) without the use of physical violence (Dunbar, 1979). However, like the transition from informal to formal reprimands, a dog’s whining and barking may escalate into growling or biting depending on the degree to which the pack’s rules and hierarchy are being resisted.

Transitioning from informal to formal means of reinforcing a society’s traditions and practices requires divorcing the persona’s collective and individual

identities. That is, the law will divorce the social aspect of being human (i.e., the collective identity) from the emotional aspect (i.e., the individual identity) thereby preventing someone from exercising their personal agency. “In removing the social and emotional conditions necessary for agency, radical isolation creates the stigma of ineligibility” (p. 110) which excludes the individual from receiving empathy for violence and harms perpetrated against them (Dayan, 2011). This process of divorcing these two identities is evidenced through the judiciary’s refusal to account for in their decision-making process the grief a human experiences after learning of or watching their beloved pet die at the hands of police. One of the most negative emotional experiences associated with pet keeping is having to navigate the death of a pet (Grier, 2006; Ryback, 2016). Depending on the breed and species, a pet may live for a few years or decades which allows the animal “enough time to truly enter and live in your heart” (Ryback, 2016, para. 2). Cordaro (2012) found that the grief cycle that a pet owner goes through is the same as the one people go through after the loss of a human companion. Planchon, Templer, Stokes, and Keller (2002) found that, much like a human death, the manner in which a pet dies affects the degree of grief felt by the animal’s human companion with the grief becoming more intense if the pet had died because of an accident. Therefore, the bond between human and dogs even allows us to grieve their deaths.

Regarding canicide, the judiciary recognizes that the “emotional attachment to a family’s dog is not comparable to a possessory interest in

furniture” (*Hells Angels*, 2003). Furthermore, the owner is present in many canicide incidents when the dog is shot by police (*Billingsley v Hunter*, 2015; *Brown v Battle Creek Police Dept.*, 2016; *Moore v Town of Erie*, 2013; *Reyes v City of Austin*, 2017), and they are in some instances forced to remain near their dead pet (*Hells Angels*, 2003; *P.M. v Bolinger*, 2011). Yet, as the previous chapter noted, the judiciary continually dismisses this emotional bonding by denying a pet owner from bringing excessive force claims on behalf of their dog and by downplaying the emotional state that occurs when someone learns of their dog’s death. This dismissal of the emotional connection between someone and their beloved pet is what Attig (2004) referred to as disenfranchised grief which occurs when a society or group “actively discount, dismiss, disapprove, discourage, invalidate, and delegitimize the experiences and efforts of grieving” (p. 198). The grieving process over the loss of a dog and the judiciary’s dismissal of this emotional connection in their decision-making process demonstrates that humanity has never been separated from the plight of animals. “Everything that has happened to them has happened to us” (Baudrillard, 2017, p. 133). Therefore, examining the social lives of domestic dogs provides us an insight into our social realities.

Domestic dogs, unlike their wild dog brethren, do not form packs as a habit, and the pack’s members are generally different with each new formation when packs do emerge (Dunbar, 1979). Furthermore, most interactions between dogs are usually dyadic and occur at the individual level (Dunbar, 1979). The

fluidity of domestic dog packs is not surprising when one considers that in 2016 approximately 60 percent of dog owning households only had one dog (American Veterinary Medical Association, 2018a). That is to say, humans are the only form of socialization for many domestic dogs. Therefore, most domestic dog pack formations are simulations of the packs formed by wild dogs. However, all simulations need an element of the *Real* upon which to build (Baudrillard, 2017). For these domestic dog packs, the Real upon which the simulation is built is the individual dyadic interactions between dogs. These dyadic interactions are the foundations for the social organization of dog packs (Dunbar, 1979).

Viewing animals as inherently different prevents us from forming any type of intimate bond with Beings other than humans. The result of this separation is that humans have nowhere to turn to for relaxation and restoration other than the simulation, and the purpose of this simulated rejuvenation enable the re-creation of the models necessary to maintain the simulation. Restorative locations of the *Real*, however, are locations which typically remove the individual from their stressful environment, and they are able to maintain the individual's attention with little cognitive effort (Clayton & Meyers, 2009).

Self-determination will be real to the extent to which the masses have been dissolved into individuals liberated from all propaganda, indoctrination, and manipulation, capable of knowing and comprehending the facts and of evaluating the alternatives. In other words, society would be rational and free to the extent to which it is organized, sustained, and reproduced by an essentially new historical Subject (Marcuse, 1964, p. 252).

This is the power of the human-dog bond, and it is the power of dog's body which threatens the hyperreal. It is that intimate connection between humans and dogs that allows the individual to exercise "a right to self-possession that no one can take away" (p. 136). As such, humans encase a part of themselves within their dog(s). Law is not directed toward the person; rather, it is directed toward the person's social relations. The regulation of dogs is the regulation of the social which in turn regulates human identity.

Approaching the criminal justice system from the perspective of canicide reveals that we were born into a legal system that was created centuries ago that has become rigid and unwavering much like Weber's (2002) cloak with "a shell as hard as steel" (p. 121). Although Weber's (2002) work on the Protestant Ethic centered on the pursuit of wealth as the origin of the social cosmos in which we find ourselves, underlying this pursuit is the attempt to escape punishment manifested in the form of poverty. This conceptualization of punishment finds itself in the works of Marx (1978) as well: "the less you *are*, the more you *have*; the less you express your own life, the greater is your *alienated* life—the greater is the store of your estranged being" (p. 96). Under alienation, the punishment derives from knowing the *truth* about yourself but not being able to express this truth in society. This denial of one's truth leads to a hyperreality where the *Real* exists in a spectral state between who a person truly is and who they have to be based on the roles set forth by society. For this hyperreality to continue its existence, it must prevent the resurrection of the *Real* (Baudrillard, 2017). As

Baudrillard (2017) stated, “Never again will the real have a chance to produce itself—such is the vital function of the model in a system of death, or rather of anticipated resurrection, that no longer even gives the event of death a chance” (Baudrillard, 2017, p. 2). Attacks on dogs, then, are attempts by the hyperreal to eradicate, or at least silence, the *Real*—those social relations voluntarily developed between two Beings and that are beyond the control of the state. So long as dogs and other animals exist in one’s life, then we exist as humans and maintain a sense of personhood, however slight, which prevents the hyperreal from completely culling our humanity from existence.

Weaponizing the Dog

The weaponization of the dog occurs on various levels. One level is the literal weaponization of the dog. Ancient societies would outfit dogs with spiked collars or other pieces of armor and send them into an enemy’s oncoming cavalry (Sloane, 1955). There were 15,000 dogs sent to war by France between 1917 and 1918, and just over a third (5,321) died during the war (Pearson, 2013). The military functions performed by dogs during this time were delivering messages, running telegraph wires, and guarding posts (Pearson, 2013). Dogs have been and are still used in law enforcement functions as well. According to the National Police Dog Foundation (2018), there are four main uses of dogs in law enforcement: sentry and apprehension, search and rescue, detection (e.g., explosives), and arson investigations. Yet, the most effective venue for weaponizing dogs is through language. Human beings are social animals and

they communicate through language even though the process of communicating may manifest in different forms such as the way someone holds their arms (e.g., body language) or the pitch of one's voice which alters a sentence's meaning (Delise, 2007). Regardless of its form, language transmits a collective's beliefs, values, and culture to the various group members both new and old. Language, then, unifies the various groups of society into a single collective against a common enemy (i.e., folk devil).

On November 23, 1972, Michael Tarrant walked into the bedroom of a stranger while carrying a knife and accompanied by a German Shepherd (*Commonwealth v Tarrant*, 1975). Once in the bedroom, Mr. Tarrant began taking money and other items and allowed the dog to roam freely throughout the room where it came within a few feet of the victim at one point. Mr. Tarrant threatened to kill the victim if the victim lied about any valuables in the house. Mr. Tarrant was caught, charged, and convicted of entering someone's home and committing an assault in the commission of a felony and armed robbery. The basis for charging Mr. Tarrant with armed robbery was the presence of the German Shepherd during the encounter. On appeal, Mr. Tarrant argued in part that a dog cannot be a weapon because "a dog is a neutral instrumentality and is not per se dangerous as is a gun." (*Commonwealth v Tarrant*, 1975, p. 413). On appeal, the judiciary agreed with the defendant that a victim's subjective perception is not enough to transform a neutral instrumentality which was not by design meant to inflict harm or death into a "dangerous weapon" because the

German Shepherd is a member of a well-known breed that is recognized for the ability to inflict harm and “dogs may be trained to attack persons”

(*Commonwealth v Tarrant*, 1975, p. 418). A New Jersey court upheld the conviction of a juvenile for assault with an “offensive weapon” because he used his German Shepherd to intimidate a father and his 6-year-old daughter (*State in Interest of R.*, 1979).

In 1982, a man used his German Shepherd against two store employees as a means of evading apprehension for shoplifting. After being convicted for assault with a dangerous weapon, the defendant appealed arguing that a dog could not be a dangerous weapon since it is not an inanimate object (*People v Kay*, 1982). The judiciary reasoned that a dog constitutes a deadly weapon by “the manner in which the [dog] is used and the nature of the act which determines whether the [dog] is dangerous” (*People v Kay*, 1982, p. 444). Likewise, in *State v Bowers* (1986), the court reasoned that “a Doberman pinscher is not a deadly weapon per se, but an ordinary object *used* in a deadly manner is a deadly weapon within the meaning of [the statute]” (p. 425; emphasis in original; see also *State v Sinks*, 1992). Even if one is not present during an incident with their dog(s), they may still be charged and convicted for wielding a dangerous weapon. In *State v Bodoh* (1999), the owner of two Rottweilers was charged and convicted for the negligent handling of a dangerous weapon—his dogs—after the two dogs attacked a 14-year-old boy who was riding his bike. It was Bodoh’s failure to adequately supervise the containment of

his dogs, then, that was the determining factor in the court's decision. In *State v Cook* (2004), the court affirmed the conviction of James Cook for assault on a police officer with a *deadly weapon* (a dog). The "[d]efendant pushed [the] dog toward Officer Linstad, called the dog by name and said 'bite him'" (p. 140) thereby inciting the dog to bite the officers (*State v Cook*, 2004). As the previous chapters pointed out, similar behaviors by law enforcement are narrated with a different language.

On March 8, 2001, Officer Noble of the Kalamazoo Police Department responded to a parole officer's request for police assistance in the apprehension of Quincy Dunigan (*Dunigan v Noble*, 2004). According to the judiciary in *Dunigan v Noble* (2004), Officer Noble requested backup and Officer Jenkins responded with his K-9 Kojak. Officer Jenkins and Kojak set up position on a landing just inside the backdoor while Officer Noble took up position at the kitchen stairs and a Sergeant O'Connor positioned himself at the stairs to the basement; Ms. Dunigan was on the second step of the kitchen stairs in the middle of the three officers (*Dunigan v Noble*, 2004). Officer Jenkins saw someone in the basement move and order Kojak to begin barking after his commands for the individual to show their hands failed to bear fruit. At this point, an individual who was not Quincy proceeded up the stairs pass Officer Jenkins and Kojak without provoking the police dog. "Immediately thereafter, Officer Noble pushed [Elois Dunigan] in the back" (p. 489) causing her to stumble down one step where she was bitten by Kojak (*Dunigan v Noble*, 2004). Ms. Dunigan

brought an excessive force claim against the officers arguing in part that Officer Jenkins seized her by knowingly, willfully, and intentionally bringing “a dangerous animal, Kojak, into the narrow entranceway of her home” (*Dunigan v Noble*, 2004, p. 492). The court, however, disagreed with Ms. Dunigan’s argument.

First, the Sixth Circuit in *Dunigan v Noble* (2004) never used the word dangerous when discussing Kojak. Second, the Sixth Circuit concluded that no seizure had occurred since Officer Jenkins did not enter the home to intentionally seize Ms. Dunigan with Kojak. Furthermore, Officer Jenkins did not command (i.e., intentionally order) Kojak to bite (*Dunigan v Noble*, 2004). In other words, no seizure occurred because Officer Jenkins had no intention of seizing Ms. Dunigan by means of having Kojak bite her. Officer Jenkins’ testimony that “*Kojak perceived a threat when [Ms. Dunigan] stumbled...into the dog’s defensive perimeter. Kojak responded, as trained, by defending his handler.*” Officer Jenkins quickly restrained and refocused Kojak once the dog began biting [Ms. Dunigan]” (pp. 492-493; emphasis added) was enough for the court to conclude that Officer Jenkins was exercising control over Kojak (*Dunigan v Noble*, 2004). What the court is saying, when taken in its entirety, is that Ms. Dunigan does not have Fourth Amendment rights to invoke since Officer Jenkins did not intend to produce such rights through his actions. This reluctance of the court to recognize the harm done to Ms. Dunigan by Officer Jenkins bringing a dog into the encounter becomes even more important when one recalls from the chapter on the Fourth Amendment that “[a] seizure must occur before an

excessive force claim is cognizable under the Fourth Amendment” (*Dunigan v Noble*, 2004, p. 492). The judiciary’s use of legal language to mold and transform what constitutes intent allows for the exclusion of many police canine bites from Fourth Amendment protections.

Jessica Dennis, an eighteen-year-old, was bitten by a police canine when the dog and its handler along with another officer were searching nearby woods for an individual who fled from a party when the police showed up for a loud noise complaint (*Dennis v Town of Loudon*, 2012). Although Ms. Dennis was subjected to being bitten several times across her body (e.g., arms, legs, and shoulder) and did not resist the officer’s commands, “the [police] dog clamped its teeth on her tightly and began to drag her across the ground” (*Dennis v Town of Loudon*, 2012, p. 9). The court in *Dennis v Town of Loudon* (2012) believed that the police canine’s actions were justified because the canine unit’s presence in the woods was to “track the scent of the partygoer who had fled into the woods, and not to acquire physical control of *that person*” (*Dennis v Town of Loudon*, 2012, p. 14; emphasis added). Again, the physical and emotional trauma suffered by the 18-year-old legally does not exist because the officer did not intend to seize the teenager via the police dog’s bite. The employer of Roy Wilson, a bus driver, allowed him to use a backroom for sleeping and showering at a company warehouse since he had to commute 90 miles from his home for his shifts (*Wilson v Phares*, 2015). This is what Mr. Wilson was doing when another employee of the same company—not knowing Mr. Wilson was there—

arrived at the location and contacted the Dothan Police Department because he saw a strange car and did not want to confront the car's driver. After entering the warehouse and giving three loud commands identifying their presence, the police began searching the warehouse and the office space in the back. It was in the office space that Kazan (the police canine) alerted to human scent, and the K9 officer entered the room indicated by Kazan (*Wilson v Phares*, 2015).

According to Corporal Phares, Kazan "lunged toward Mr. Wilson to protect his handler from a threat" (*Wilson v Phares*, 2015, p. 6). Corporal Phares tried to pull and order Kazan off of Mr. Wilson, but the dog continued biting Mr. Wilson. In this case, the court concluded that Corporal Phares did not intend to seize Mr. Wilson even though Corporal Phares intentionally released Kazan to search the office space (*Wilson v Phares*, 2015). According to the court in *Wilson* (2015), Corporal Phares' intention to release Kazan and search the building is not pertinent in determining if a seizure occurred; rather, the crucial issue is whether or not Corporal Phares intended to seize Mr. Wilson via Kazan. Furthermore, in response to Mr. Wilson's false arrest claim, the court concluded that a false arrest claim requires a seizure just like an excessive force claim (*Wilson v Phares*, 2015). Therefore, no seizure means that no arrest—false or otherwise—has occurred. What canicide shows us is that the term "dangerous dog" not only removes the dog from its status as living property, but it also weaponizes the dog by making it an enhancement for any charges brought against an individual.

Analyzing the weaponization of the dog from the perspective of canicide also shows us that the bond between humans and dogs is weaponized as well.

Weaponized Pets

The rise of the “pet” signaled a change in the human-dog relationship (Ritvo, 1986). Defining what the term pet means is difficult. The term has its origins in the French word “petit” which means little (Grier, 2006). *Merriam-Webster’s Collegiate Dictionary* (2008) defines “pet” “2: a domesticated animal kept for pleasure rather than utility” (p. 926). From this definition, the primary distinction demarcating an animal as a pet is that the animal is kept for purposes other than utilitarian purposes such as hunting, protection, and herding (Ritvo, 1986). A pet, then, is an animal that is subjugated (i.e., domesticated) by humans, and whose interaction with humans is defined by the involvement of touch and the ongoing care of the animal by humans (Grier, 2006). Yet, this definition of a pet does not fully capture what the relationship between humans and dogs which led to the use of “companion animal” to describe a pet (Grier, 2006). The American Society for the Prevention of Cruelty to Animals (ASPCA), defines a companion animal, although they do use the term pet for general discussion, as a “domesticated or domestic-bred animals whose physical, emotional, behavioral and social needs can be readily met as companions in the home, or in close daily relationship with humans.” In this definition, we see that a defining feature is the dependency of the animal on humans. However, this

definition does not focus on the necessities of life (e.g., food, water, and shelter) being provided by the human.

Although fulfilling these basic needs for the animal is implied, the concept of a companion animal focuses more on the relationship between humans and animals (e.g., fulfilling the animal's emotional and social needs). Wood and colleagues (2015), in a study of 2,692 participants spread over two countries, found that approximately half of the respondents "got to know people in [their] neighborhood as a direct result of their pet" (p. 8). In fact, dog guardians were 5 times more likely to meet other people from the neighborhood through their companion animals with approximately one-quarter forming a friendship with the person they meet (Wood, Martin, Christian, Nathan, Lauritsen, Houghton, Kawachi, & McCune, 2015). Parish-Plass (2008) examined the effectiveness of animal assisted therapy (AAT) in helping children recover from sexual abuse and found that animals act an "icebreaker" between the abused child and their therapist. "When the child observes the authentic, positive, nurturing way the therapist relates to the animals, the child often perceives the therapist in a more positive light and feels less threatened" (Parish-Plass, 2008, p. 13). Companion animals oftentimes become surrogate children (Veevers, 1985; Flynn, 2000b). A deputy from an East Tennessee sheriff's department made the following statement regarding the sudden death of his wife's (also a deputy sheriff) K-9 partner, "[My wife] and I don't have any kids of our own. She [the police K-9] was our kid, our first kid" (Dorman, 2018). This view of pets allows for the

incorporation of non-traditional animals (e.g., livestock and wild animal) to be deemed a pet. Dogs used for utilitarian functions, such as hunting or protection, may be considered a companion animal. Society, though, does not refer to a police canine as a “pet.”

The judiciary refers to police canines as canine partners: “Jet, *Deputy Money's canine partner*, apparently got so excited by all the yelling and pulling that he bit Deputy Hakker without being commanded to bite anyone” (People v Henderson, 1999, p. 458; emphasis added); “Corporal Phares and his canine partner, Kazan, and Officer Chris Miller responded as Officer Hunt's backup” (*Wilson v Phares*, 2015, p. 4). The use of the term “partner” appears innocuous; however, it is subtle way of reinforcing the dominant power structure that situates the police at the center of American life. The term partner is defined as “2 a: one associated with another esp. in an action’...and as...‘d : a person with whom one shares an intimate relationship” (Merriam-Webster’s Collegiate Dictionary, 2008, p. 904). These definitions and the others associated with the term partner and its derivatives hold at their core a social relationship between two or more people. The National Sheriffs’ Association (n.d.) has even put together a protocol for burying K-9s that have died either on active duty, in the line-of-duty, or post duty (after the dog is retired). The protocol allows and encourages departments to provide as many honors as possible when burying a police canine. These honors include having an honor guard present to guard the body or ashes and-or the gravesite; having pall bearers to carry and inter the deceased’s body or ashes;

allowing for the playing of “taps”— “the 24-note melancholy bugle call (Veterans Affairs, n.d.)— at the deceased dog’s funeral; a 21-gun salute; and even allowing for the dog’s casket to be draped in the flag of the state for local and state agencies or the national flag for federal agencies (National Sheriffs’ Association, n.d.). Referring to the police canine as a “canine partner” automatically elevates the dog from mere property and bestows personhood onto the police canine since the term situates them as equal to the human officer.

Even when a police canine is viewed as property, they still receive the similar benefits as humans. For instance, Tennessee Code Annotated (TCA) 39-14-205 (Intentional Killing of an Animal) makes it illegal to kill the animal of another without that person’s consent. Although a person is justified in killing the animal of another if that animal is an immediate threat to the human or their own animal, this justification is invalid when the individual is committing a crime or kills a police dog in an attempt to evade capture (TCA 39-14-205). In the case of a police dog’s death, determining the appropriate charge is contingent on the value of the police canine including the value of its training (TCA 39-14-205). The cost of starting a K-9 unit is approximately \$20,000 (Basich, 2003). According to the Glendale Police Department (2021), “The current price for a police dog is approximately \$12,000, not including the training.” This price increases depending on if the dog will be single purpose (i.e., patrol, narcotics, bomb detection, cadaver, etc.) or if the dog will be multipurpose (i.e., trained in two or more specialties) (Basich, 2003; Glendale Police Department, 2021). Overall,

“the total average cost of a successful canine police program is \$55,672.42” (Wing, 2004).

Reviewing TCA 39-14-105 (Grading of Theft), indicates that the value of the dog alone is a Class C felony (property or service valued between \$10,000 and \$60,000). Putting this into perspective, voluntary manslaughter—“the intentional or knowing killing of another in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner”—is also a Class C felony (TCA 39-13-211). In the eyes of the law, then, killing a police dog is just as appalling as killing a human in a state of passion. Therefore, the judiciary’s use of the term “canine partner” weaponizes the social bond that exists between humans and dogs by recognizing the bond only when it manifests itself as a form of labor power (e.g., colleagues).

When Adam Smith penned *The Wealth of Nations*, he set into motion an economic ideology that would forever change the face of the world. Smith’s work focused on the benefits of dividing labor. In its simplest form, the division of labor takes the skills developed and honed by a craftsperson over many years, reduces these skills to their basic movements, and divides these skills among several workers (Smith, 2003). Once this division is accomplished, a worker only needs to learn one repetitive task instead of having to learn an entire skill set. The capitalism that we know today, however, was “painstakingly built by the invisible pens of lawyers and judges that created over time broader and bolder property rights that are ultimately enforced by the power of the state” (Nutting,

2019). As the United States Supreme Court said over 100 years ago regarding the unintentional death of a dog by a cable car, “while private interests require that the valuable ones shall be protected, public interests demand that the worthless shall be exterminated, they have, from time immemorial, been considered as holding their lives at the will of the legislature” (*Sentell v New Orleans & C.R. Co.*, 1897, p. 694). Therefore, property, in any form, cannot exist without police violence (Correia & Wall, 2018). Similar to the weaponization of the dog and the associated social relationships, the dangerous dog construct operates on various levels as well. On a direct level, the dangerous dog construct refers to a living animal that is an actual threat to the safety of humans and pets. On a more subtle level, though, the dangerous dog construct operates in the form of the cur.

Curs, Criminals, and Culling

Curs are typically associated with *inferior* bloodlines. The American Kennel Club’s (2021) online glossary informs the reader to “see crossbred” as their definition for cur. Crossbred is defined as, a “dog whose sire and dam are representatives of two different breeds.” Merriam-Webster’s Collegiate Dictionary (2008) defines a cur as “1: a mongrel or inferior dog 2: a surly or cowardly fellow” (p. 305). In both definitions, the defining feature of the cur is having bloodlines from different breeds. A cur is simply a mix bred dog. Merriam-Webster’s definition goes a little further and highlights the zoomorphic use of the term cur. The idea of being pure of blood (i.e., pureblood) began with aristocrats prior to

the Victorian era who would trace their genealogy to demonstrate that their bloodline was not tainted by someone from the lower-class (Ritvo, 1986). Animals were bred based on the specific skills that humans desired, such as hunting or protection (Tenner, 1998). As time passed, the purity of an animal's blood became more important than the animal's, or breed's, skills (Ritvo, 1986). The obsession with breed and blood was related to the desire to find "indigenous" breeds (Skabelund, 2008). According to Ritvo (1987), many breeds were oftentimes promoted by breeders as being the "indigenous" breed of that region or descended from the region's indigenous dogs. This allowed local communities to place regional pride in the breed, and sometimes "elevated these animals as national symbols" (p. 356) with loyalty and bravery as the two most common characteristics (Skabelund, 2008). Many police departments spend thousands of dollars to acquire German Shepherds that have been specifically bred and trained in Germany due to the belief that these dogs have stronger bloodlines (Tenner, 1998).

Unlike other nations, America does not have a dog that is "indigenous" to the nation which may explain why "Americans seem to reserve their affection and enthusiasm for mixture itself" (Tenner, 1998, p. 79). Yet, American society does have a displeasure for race mixing and canine "mongrels" (Dickey, 2016) which seems at odds with their love affair for the "great American mutt" (Tenner, 1998, p. 79). Therefore, if "we treat *blood* and *property* as metaphors crucial to defining *persons* in civil society, then it is easy to see how corruption of blood and

forfeiture of property could become operative components of divestment” (Dayan, 2011, p. 45; emphasis added). That is, individuals with contaminated blood are not considered *pure* persons and are culled from the rest of society. The application of the term cur to humans, though, is not positive or uplifting; rather, the term is used as a method for marginalizing the individual and differentiating the person from the other members of the group. Cur, then, is a derogatory term that strips someone of their personhood just like the terms “thug,” “white trash,” “cow,” or “bitch.” Just like the image of blackness transformed from the docile slave of the 19th-century into the menacing superpredator of the 20th-century, the pit bull transformed from America’s dog into a four-legged serial killer stalking the city streets and rural back roads (Junod, 2104). Therefore, “if a pit-bull-Labrador mix bites, then the pit bull is always what has done the biting, its portion of the blood—its taint—ineradicable and finally decisive” (Junod, 2014). Likewise, a person of color has long been seen as a “thug” (i.e., criminal) in the eyes of society when they interact with the police (Smiley & Fakunle, 2016). An officer may truly believe that their life is in jeopardy at that moment of they take a life; however, it is how the living and dead is constructed as a threat to society in the aftermath of a shooting that constitutes the culling process.

Culling refers to removing those beings from a population who are deemed detrimental to the society’s survival (Derksen, 2019). However, the culling process may be used on the living as well in the form of mass incarceration. At year-end 2019 the overall prison population in the United States

stood at approximately 1,430,800 million individuals, and of these individuals, approximately 1,380,400 were sentenced to at least one year (Carson, 2020). The increase in the nation's prison population from its pre-War on Drugs level to its current size is the result of changes in the nation's laws instead of a change in crime rates (Alexander, 2012). This change in laws brought with it a transformation in the language used by the criminal justice system when discussing the various individuals caught up in the operation of the system itself (Feeley & Simon, 1992). Specifically, the language used by those within the criminal justice system changed from one of moral and clinical descriptions to that of risk management and probabilities (Feeley & Simon, 1992). Transforming the system's language moved the focus of the criminal justice system from the individual to the functioning of a system. A result of this transformation is that the individual loses their humanness which allows those in power to enact laws targeting marginalized populations under the guise that they are targeting a behavior instead of the individual or group (Alexander, 2012). Similar to the how breed specific legislation uses the possibility of biting to justify laws targeting specific phenotypes of dogs, race neutral language uses the possibility of criminality to target people of color (Alexander, 2012). Applying the label criminal to someone allows the government to strip the individual of rights (e.g., the right to vote), deny the individual social benefits (e.g., Pell grants, housing, etc.), and it allows private citizens to deny applicants a job based on prior criminal history

(Alexander, 2012). The term “criminal,” then, is a code for cur which in turn provides the justification for the individual’s culling from society.

The transformation in law raises an interesting question, can the law interrupt police violence? Answering this question requires us to first locate the source of police violence. Although the police officer may use violence when performing their duties, the individual officer is not the source of police violence. The power to police is reserved only for the state. “The United States Supreme Court has held that a state can deprive a citizen of property when such deprivation is justified as a legitimate exercise of police power” (*Colorado Dog Fanciers v Denver*, 1991, p. 653). The United States Supreme Court declared almost 100 years before *Colorado Dog Fanciers* (1991) that the Court is “bound to consider the nature of the property, the necessity for its sacrifice, and the extent to which it has heretofore been regarded as within the police power” when determining what constitutes due process as guaranteed by the Fourteenth Amendment (*Sentell v New Orleans & Carrollton R. Co.*, 1897). Furthermore, this power is unevenly distributed across the three branches of government which protects the state’s policing power from those it is used against. In *DA’s Office v Osborne* (2009), the United States Supreme Court declared that a “criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man” (p. 68), and the individual’s innocence disappears after conviction. Guiding this decision was the Court’s belief that the integrity of the criminal

justice system was more important than providing relief for someone whose claim of innocence was potentially viable.

The availability of technologies not available at trial cannot mean that every criminal conviction, or even every criminal conviction involving biological evidence, is suddenly in doubt. The dilemma is how to harness DNA's power to prove innocence without unnecessarily overthrowing the established system of criminal justice (p. 62).

Like the mythical hydra, eliminating one outlet of the state's policing power does not destroy the beast. Instead, new outlets of policing emerge that continue the sacredness of safety masking the state's use of violence and coercion against the masses.

Future Directions

Canicide effects more people than just those who lost a dog and those who took the dog's life. Understanding the function of canicide in the reproduction of society requires the use of data that extends beyond the law. One area that future research could explore regards those individuals who work within the animal welfare profession, specifically animal control officers. Animal control officers hold a unique position within American society in that they are situated at the intersection where the promotion of animal welfare meets the policing power of the state (Animal Care Center of NYC, 2018; Los Angeles County Animal Care and Control, 2017). Furthermore, animal control officers may be considered private individuals, quasi-government employees, or full embedded within a jurisdiction's law enforcement agency. Like the animals these individuals seek to protect, these individuals are in limbo between being socially

enshroud by the sacredness reserved for law enforcement officers and nothing more than a glorified dog catcher (Arluke, 2004). It is this unique positioning that makes the insights of this population invaluable for understanding how society reproduces itself through police violence against dogs. Research in this area could even extend out to those individuals tasked with euthanizing dogs to explore how euthanasia affects their lived experiences and perceptions of canicide.

Another future direction for further study might be focused on popular and historical representations of canicide. One possible avenue would be to explore the way historical newspapers have constructed the police killing of dogs. Newspapers, historically, have the ability to allow researchers the opportunity to examine prevailing attitudes of a bygone era derives from various characteristics of newspapers. Newspapers provide a deeper contextualization of an event compared to television news; newspapers still influence what is deemed “newsworthy” for presentation on television news; and newspapers are still a source of information even in our technologically advanced society (Lawrence, 2000). Newspaper articles may be better viewed as *time machines* since they (1) are symbolic representations of the time period in which they were created, (2) documents are independent of the researcher, and (3) “all research is a social activity” (Altheide, 1996, p. 8). Finally, the information contained in newspaper articles is generally no older than 24 hours after a newsworthy incident occurs (Baumgartner, 1981). Furthermore, newspaper articles are an appropriate data

source for answering the dissertation's research questions because the short time between an event's occurrence and the reporting of the event means that the information disseminated via an article is basically "gathered on the spot" (p. 256) from those individuals directly involved in the event (Baumgartner, 1981). Finally, news articles collected for inclusion in this study will speak quite directly to how police violence against dogs is both understood and misunderstood as a "social problem" in contemporary American society.

A third area of research that is rich for exploring the effects of canicide regards the way dogs and canicide are constructed by those individuals from marginalized populations. Not only has research shown that the police kill a larger portion of dogs living in communities of color (Bloch & Martinez, 2020), but breed, like race, is intimately linked to "state formation, class structure, and national identities" (Skabelund, 2008, p. 355). Even a society's construction of gender and gender roles find their way into the dog's body. Research has shown that men when compared to women were more likely to believe that neutering results in a loss of the male dog's *masculinity* (Blackshaw & Day, 1994; Fielding, Samuels, & Mather, 2002). Likewise, both Blackshaw and Day (1994) and Fielding, Samuels, and Mather (2002) found that men compared to women were more likely to equate a dog's sexuality to that of human sexuality. Even when the decision for sterilization is made, male dogs receive more beneficial treatment. Female dogs were more likely than male dogs to be sterilized; specifically, 91.2 percent of male owners and 91.5 percent of female owners have sterilized their

female dogs (Blackshaw & Day, 1994). Fielding, Samuel, and Mather (2002) similarly found that 59 percent of men and 42 percent of women believe it that female dogs should be sterilized rather than male dogs. This equating of animal abilities as indicative of human abilities underlies many social hierarchies created by humans. McCarthy (2016) notes that a long political history exists in which the dog's body—in the form of its breed—was used as an indicator of one's social status (McCarthy, 2016), and thus reinforcing the dominant class structure of that time period. This area of research may even branch out to examine the issue of canicide, as well as the role of dogs as functionaries of society, from the perspective of those individuals who identify as LGBTQIA, those individuals who work in stigmatized professions (e.g., sex workers), or even those who have been affected by extreme violence (e.g., refugees or sexual assault survivors). The focus of this research would be examining how the lived experiences of those individuals from these populations shapes and is shaped by the construction of the dog as a functionary of society, as well as the construction of the dangerous dog and canicide.

Conclusion

This dissertation began with the observation that the police kill approximately 10,000 dogs every year (Griffith, 2014; Scott, 2016) leading some to deem it an epidemic within policing itself (Whitehead, 2017). The dissertation then proceeded to discuss the general state of police violence before moving into a discussion of *Brown v Battle Creek Police Department* (2016) and the

underlying themes arising from the Sixth Circuit's decision. From there, the conversation expanded outward to discuss the use of the dangerous dog as a folk devil to justify canicide. The purpose of this discussion was to help demonstrate how the themes within the Sixth Circuit's decision are symptomatic of the judicial practice of excluding groups from participating in society through a narrowing of Fourth Amendment protections. The focus of this chapter is on the larger implications of canicide and the dangerous dog.

One of the difficulties arising from trying to explore the broader meanings of canicide is that victim is always "armed" in the sense that it can always bite. The dog's ability to bite and inflict harm provides a ready-made justification for officers since it is rooted in the human fear of becoming prey (Delise, 2007). The solution to this dilemma was simply to ground the analysis in the very social relations that exist between humans and dogs, specifically one's lived experiences with dogs. If someone has positive experiences with a dog or a breed, then they will perceive the dangerousness of dogs or of that breed as lower than those with negative experiences (Schiavone, 2015). However, our interactions with dogs does more than just shape our perceptions of the breed or the species, it also shapes our identity. Weaver (2013) discusses how her pit bull, Haley, provided a sense of security during f's transition, and how her "whiteness, queer identity, and middle-class status encourage other humans to read Haley as less threatening" (p. 689). This mutually beneficial relationship between the identities of different beings is what Weaver (2013) refers to as

becoming in kind. That is, our personal identities are molded within those unseen spaces between humans and dogs (Weaver, 2013). Acknowledging this reciprocal relationship between the identities of humans and dogs led me to reflect on my lived experiences with canicide.

Reflecting on my lived experiences through the lens of canicide highlighted instances where the shooting of a dog by police was a fundamental aspect of that experience. From informing two county deputies that they can shoot amongst me and a dog that I was trying to get on a catchpole (i.e., control stick) if anything went wrong to the anger and sense of injustice at discovering two boxers—shot by the same deputy from an adjacent county —sitting in one of our kennels located in the fenced in lot where we kept our vehicles and the more aggressive dogs. A third dog died at the location of the shooting. Making the discovery more infuriating was that neither dog showed any signs of aggression as I physically picked them up and put them in the kennels on the back of my work truck. In fact, they almost seemed relieved and grateful. Somewhere in between these two experiences is the night I got up to let my dog, Midnight (a Labrador-Rottweiler mix), go outside. I stood at the door contemplating if I should let him go run our unfenced 2 acres because after I saw the familiar blue lights of a county patrol car flashing approximately one-quarter of a mile from my parents' home in the county. As I held onto Midnight's collar, I thought about the likelihood of him meandering up the road to explore the traffic stop. I saw, in my mind's eye, the deputy becoming fearful of this black dog—who could easily reach six

foot when standing on his hindlegs—ambling out of the darkness toward new friends. I envisioned the officer drawing their weapon and firing because, as the judiciary has made clear, they do not have wait for the dog to show its intentions. I closed the door and told Midnight that he would have to wait.

After reflecting on my relationship with dogs and canicide, I came to realize that the dog, as a construct and physical being, is an integral part in the construction and reproduction of American society. Dogs are not only pets, companions, and guardians, they are functionaries of American society as well. The rate at which police kill dogs reflects an overreliance on violence as a resolution technique as well as a continuing arrogant disregard for those beings upon which we rely and with whom we coexist. Biodiversity—also known as the “web of life” (p. 22)—consist of all living things and the ecosystems they share (WWF, 2018). The home page for the Great Smokey Mountains even greets visitors with the message, “A wondrous diversity of life” (National Park Service, 2021). Pollinators such as flies, butterflies, bees, beetles, and even some birds are responsible for pollinating approximately 75 percent of global food crops (WWF, 2018). Yet, the overall population of wildlife (mammal, reptile, amphibian, aviary, etc.) has declined by approximately 60 percent in 40 years (WWF, 2018). Canicide reveals that a similar trend is occurring among the domestic dog population as well. Furthermore, this number does not include the dogs that have died because of running at large statutes, breed specific legislation, and other

governmental policies regulating the behavior of dogs. If these current trends continue, then humans may end up culling themselves from existence.

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VITA

Jeremy Smith was born and raised in the State of Tennessee. He has worked in the animal welfare profession on-and-off since 2008. Jeremy is currently working as a case manager for the Department of Children's Services. He earned his Ph.D. in 2021 from the University of Tennessee, Knoxville. His dissertation, *The "Puppicide" of Policing: How the Law Rationalizes the Police Killing of "Dangerous Dogs"* examined federal court decisions addressing incidents where the police killed a domestic dog. Jeremy volunteers at his local animal shelter, loves motorsports, drawing, and enjoys the time he has with his friends and family.